

In The Matter Of:

*Bobby Lewis and Michael Del Vecchio v.
Alabama Department of Environmental Management*

*Vol. III
June 2, 2016*

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2 HEARING OFFICER: All right. We're

3 back after our recess. It is Thursday

4 morning, June the 2nd, I believe, and

5 I believe it's the Department's case;

6 is that correct?

7 MR. CARTER: Yes, Your Honor.

8 HEARING OFFICER: All right. Are

9 you ready to call your first witness?

10 MR. CARTER: Yes, Your Honor. We

11 are.

12 HEARING OFFICER: All right.

13 MR. CARTER: We call Phillip Davis.

14 HEARING OFFICER: Okay. Phillip?

15 You know the routine. He's got to

16 swear you in.

17 THE WITNESS: I do.

18 (The Witness was duly sworn.)

19 DIRECT EXAMINATION

20 BY MR. CARTER:

21 Q. Mr. Davis, if you would, state

22 your name for the record, please.

23

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1 Q. Okay. And what is your

2 occupation?

3 A. I am Chief of the Land Division of

4 the Department of Environmental Management.

5 Q. Okay. And you're an engineer, I

6 believe; is that correct?

7 A. I am.

8 Q. Okay. And how long have you been

9 with the Department?

10 A. This year will be 28 years.

11 Q. Okay. Now, 28 years -- you have

12 held various positions with the Department.

13 Could you please tell us what those are?

14 A. Sure. I started with the

15 Department in 1988 as an engineer, NPDES permit

16 writer in the Water Division. I worked there

17 until 1994 when I went to the Air Division as

18 Chief of the -- let me see if I can remember

19 it -- Industrial Mineral Section, in the

20 Engineering Branch, and served in that capacity

21 until 2002 when I became Chief of the Industrial

22 Hazardous Waste Branch in the Land Division. In

23 2006, I became Chief of the Waste -- what was

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1 called at that time -- the Waste Programs

2 Branch, which was a combined branch of solid

3 waste and hazardous waste. And in 2008

4 was -- we redid an organizational change, and I

5 became Chief of the Solid Waste Branch and

6 served in that capacity until 2012 when I got my

7 current position.

8 Q. Okay. And your current position

9 is Chief of the Land Division?

10 A. That's correct.

11 Q. And if you would, describe -- what

12 are -- what are the duties of the Chief of the

13 Land Division? What do you do?

14 A. I am responsible for all of the

15 Department's solid and hazardous waste

16 regulatory and remediation programs, so that's

17 solid waste, hazardous waste, underground

18 storage tanks, brownfields redevelopment,

19 recycling, any number of -- of programs that

20 fall under -- under those areas.

21 Q. Okay. And so that would include

22 the management of permitting of solid waste

23 landfills?

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1 A. It does.

2 Q. Okay. What about -- and does that

3 involve the writing and preparation of

4 regulations and -- or statutes or proposed

5 legislation?

6 A. It does. I've -- I've -- I've

7 authored regulations and also written and been

8 involved in writing statutes, yes.

9 Q. Okay. And now, particularly, for

10 this appeal, you are familiar with the modified

11 solid waste permit that was issued to the City

12 of Dothan?

13 A. I am.

14 Q. Number 35-06?

15 A. Yes.

16 Q. Okay. And do you recall when that

17 was issued?

18 A. I believe it was January 8th of

19 this year.

20 Q. Okay. Now, the permit is Joint

21 Exhibit Number I, I believe, in the book in

22 front of you.

23 A. I think it's...yes.

<p style="text-align: right;">Page 609</p> <p>1 Q. Okay. Now, I think it's -- is 2 that your signature that appears on that permit? 3 A. It is. 4 Q. Okay. As the Chief of the Land 5 Division, do you sign all Land Division permits? 6 A. I do. 7 Q. Okay. In reviewing the permit in 8 this particular situation, what is included 9 as -- well, strike that. 10 What -- did you review the application in 11 this situation? 12 A. In this case, I reviewed portions 13 of the application, not the entire 800-plus 14 pages, but there were things in this application 15 that I did review prior to the issuance of the 16 permit, yes. 17 Q. Okay. Because -- let me back up 18 just a little bit. How does -- how does a 19 permit -- a draft permit come to you for your 20 signature? What would be the process? 21 A. Normally, as -- as we've had 22 testimony, you know, applications come in, they 23 go to whichever branch and then to the staff</p>	<p style="text-align: right;">Page 611</p> <p>1 we had several comments -- then I went back and 2 just looked in the application to make sure, you 3 know, what was -- what was there based on 4 what -- the comments and our responses. I think 5 there were a couple of things that I had the 6 staff check on just to make sure that things 7 were in order before making that final decision. 8 Q. Okay. And so in this particular 9 situation, I guess, your finding on that was 10 everything was correct, therefore, you signed 11 the permit? 12 A. That's correct. 13 Q. Okay. Specifically, what -- what 14 kind of permit is 35-06? 15 A. 35-06 is a solid waste disposal 16 permit for a municipal solid waste landfill. 17 Q. Okay. But there's been testimony, 18 and -- that there is -- there's -- there's C&D 19 waste also disposed at this facility? 20 A. There is. 21 Q. So it's not a joint permit, is it? 22 A. No. As part of our -- our 23 landfills in the state, we have effectively</p>
<p style="text-align: right;">Page 610</p> <p>1 person who will do the full technical review. 2 And -- and once that technical review is 3 complete -- and there may be, you know, 4 back-and-forth with applicants for additional 5 information, those kind of things -- once we 6 make a determination that an application is 7 complete, if required by the regulations, then 8 we release a proposed permit to public notice. 9 Following the close of that -- that notice 10 period, if any comments are received, then we 11 will begin preparing responses to those 12 comments, making any changes that we deem 13 appropriate to the permit or not, depending on 14 what those comments are and to the responses 15 that we develop. And then once, you know, that 16 process is complete, and the Branch -- in this 17 case, the Solid Waste Branch -- has a draft 18 response to comments and a proposed permit 19 action, then they will present that to me. 20 Normally, if there are comments, then that's, to 21 me, you know, something that I'm going to take a 22 closer look at, and that's what I did in the 23 case of Dothan. So there were things -- because</p>	<p style="text-align: right;">Page 612</p> <p>1 three types of landfills that we regulate: 2 Municipal solid waste; construction and 3 demolition, or C&D; and industrial waste. 4 Municipal solid waste is kind of -- if you look 5 at that as a hierarchy, that's kind of the most 6 stringent requirements. So the other types of 7 waste can be disposed of at an MSW, municipal 8 solid waste landfill. Municipal solid waste 9 cannot be disposed of at the other types of 10 landfills. Different sets of requirements, 11 different -- different stringency. So the 12 municipal solid waste landfill -- it's not 13 uncommon for certain municipal solid waste 14 landfills to have dedicated C&D disposal areas, 15 just because the types of -- the construction 16 types, the operating standards are different, 17 the design standards are different for C&D 18 industrial cells than you would have for a 19 municipal solid waste cell. 20 Q. And this -- the C&D cell that 21 you've referenced, it was set forth in the 22 application, and -- 23 A. That's correct. In this</p>

<p style="text-align: right;">Page 613</p> <p>1 modification, the City of Dothan requested not 2 only expanded and additional -- I think it was 3 three municipal solid waste cells, so a 4 municipal solid waste disposal area -- they also 5 requested to operate a C&D disposal area. 6 Q. Okay. And the request for -- the 7 application that was submitted to the 8 Department, it was -- you've already mentioned 9 an expansion. Was there anything else? Any 10 other changes to the permit that were made? 11 A. They did request two variances. 12 They requested to make some changes to their 13 groundwater monitoring system, I believe, as a 14 result of the expansion. Their gas monitoring 15 system was going to have to be altered. You 16 know, the types of things -- anytime you're 17 going to grow the facility, there are changes to 18 existing facilities and portions of facilities 19 that you're going to have to make as a result of 20 that expansion. 21 Q. Okay. Was there any change to the 22 total volume? 23 A. There was not. The daily volume</p>	<p style="text-align: right;">Page 615</p> <p>1 permittee has to certify to the 2 Department -- a registered professional 3 engineer -- certify that the facility is 4 constructed per the design that was approved as 5 part of the plans submitted with the permit 6 application. So they would have to -- to 7 certify that this thing was -- meets the -- the 8 design that they submitted that we reviewed, the 9 operational standards, all of those things. 10 Independently, the Department -- once that 11 certification is received -- the Department does 12 an onsite inspection to ensure that everything 13 is there that is supposed to be there, and also 14 looks at a number of different records, such as 15 financial insurance, other permitting such as 16 water permitting and so forth, to make sure that 17 they have everything in place that is necessary 18 for them to operate that landfill. 19 Q. Okay. If you could, could you 20 just give an example if -- I know in this 21 particular case, one of the -- one of the 22 items -- I think one of the -- in the request 23 for hearing, there's an allegation there's</p>
<p style="text-align: right;">Page 614</p> <p>1 that's specified in the permit remained the 2 same. 3 Q. Okay. Let me direct you, if I 4 may, to -- it's Section I, E2 of the permit. 5 E12, excuse me. 6 A. Okay. All right. 7 Q. You see it's Certification of 8 Construction? 9 A. Yes. 10 Q. Okay. There's been testimony that 11 is referenced, I believe, a couple of times, 12 that it's -- Certification of Construction. 13 Would you, I mean, explain that section of the 14 permit for me? 15 A. Sure. This permit is an operation 16 permit. It authorizes the applicant or the 17 permittee to operate a municipal solid waste 18 landfill subject to these requirements. Part of 19 that process before they get that final 20 authorization -- the permit in and of itself is 21 not the final authorization. The final 22 authorization is dependent upon -- basically, 23 two things have to happen. The applicant or the</p>	<p style="text-align: right;">Page 616</p> <p>1 wetlands involved. Is that something that 2 would -- could somehow play into the 3 Certification of Construction? 4 A. It could and -- and -- and would. 5 In the case of wetlands or any of the other 6 areas in the -- in the standards that are 7 subject to control by another authority, such as 8 Fish and Wildlife with threatened or endangered 9 species, or archaeological artifacts by the 10 State Historical Commission, one of the things 11 that we do is require the applicant to address 12 those areas as part of its application. And 13 then if those other entities require them to 14 take whatever mitigating steps, in the case of a 15 wetlands, or in this case of a wetlands, they 16 had to obtain a permit from the Corps of 17 Engineers to authorize a fill of the wetlands. 18 And so one of the things that -- that we will do 19 before we certify this facility to accept waste 20 is, they will have to demonstrate that they have 21 satisfied whatever requirements the Corps has 22 placed on them. 23 Q. Okay. And that -- and -- as --</p>

<p style="text-align: right;">Page 617</p> <p>1 none of that -- I mean, the certification of the 2 land -- that doesn't happen until later on? 3 A. That's right. 4 Q. Okay. 5 A. It would be when the landfill is, 6 in their eyes, based on their demonstration, 7 through their certification, ready to accept 8 waste. 9 Q. Okay. I guess, 10 specifically, let me -- in front of you, there's 11 some regulations, and I believe it is Petitioner 12 6 and 7, maybe in front of you there. 13 A. Yes. 2, 6, and -- well, 14 R-2, P-6, and P-7, yes. 15 Q. Okay. Now, first thing I want to 16 talk to you about is the siting requirements. 17 A. All right. 18 Q. I think -- I'm -- okay, I'm sorry. 19 I got too many tabs going up here. It's hard to 20 keep up. If you would, look at -- it's going to 21 be 335-13-4-.01. And it will be (2)(a). 22 A. All right. 23 Q. Okay. The Petitioners in this</p>	<p style="text-align: right;">Page 619</p> <p>1 MR. CARTER: Okay. 2 HEARING OFFICER: Answer. 3 A. It does not. 4 THE WITNESS: Thank you. 5 BY MR. CARTER: 6 Q. Okay. And would you explain your 7 answer? 8 A. The reason is that a facility is 9 defined in the solid waste rules as a facility 10 that -- a location, I guess I'll say, 11 that -- well, why don't I read that? Would that 12 be easier rather than me talking off the top of 13 my old bald head? 14 Q. Sure, that'll be fine. It's 15 Petitioners Exhibit 6, I believe, is the -- or 16 -- well -- 17 A. 7. 18 Q. 7, okay. 19 HEARING OFFICER: Exhibit 7? 20 THE WITNESS: P-7. 21 HEARING OFFICER: P-7? 22 THE WITNESS: P-7. 23 A. And "Facility" is defined under</p>
<p style="text-align: right;">Page 618</p> <p>1 case are basically saying that under the -- that 2 section, Water Quality Standards, that the 3 permit violates Section (a) there. And 4 I'll -- I'll read it briefly and then 5 I'll -- okay. 6 Section (a) says, A facility shall not 7 cause a discharge of pollutants into waters of 8 the State, including wetlands, that is in 9 violation of the requirements of the National 10 Pollutant Discharge Elimination System, NPDES, 11 Alabama Water Pollution Control Act, Code of 12 Alabama 1975, Sections 22-22-1 to 13 22-22-14 and/or section 404 of the Clean Water 14 Act, as amended. 15 Now, does the Permit 35-06, does it violate 16 that water quality standard? 17 A. It -- 18 MR. LUDDER: Objection, Your Honor. 19 Calls for an opinion that embraces an 20 ultimate issue to be decided by the 21 Commission, in violation of Rule 704 22 of the Rules of Evidence. 23 HEARING OFFICER: Overruled.</p>	<p style="text-align: right;">Page 620</p> <p>1 Rule 335-13-1-.03(47), which says, Facility. 2 All contiguous land, structures, or other 3 appurtenances used for the processing, 4 treatment, storage or disposal of solid waste, 5 or the recovery of recyclable materials from 6 solid waste, whether or not authorized or 7 permitted, including, but not limited to, solid 8 [verbatim] waste disposal areas and waste 9 disposed therein. 10 Q. Okay. 11 A. So this would not become, under 12 that definition, a facility until such time as 13 it is processing, storing, or disposing of solid 14 waste. 15 Q. Okay. And relating back to what 16 you said on the Certificate of Construction, is 17 it true that -- that can't happen until the 18 Department approves it? 19 A. That's correct. 20 Q. Okay. All right. As for -- back 21 again to Petitioners' Exhibit 7 [verbatim], 22 below on Water Quality Standards, Section (c), 23 it refers to, Landfill units including buffer</p>

<p style="text-align: right;">Page 621</p> <p>1 zones shall not be permissible in wetlands, 2 beaches or dunes. 3 Does that, in your opinion -- I mean, does 4 the permit violate that standard? 5 A. No, it does not. 6 Q. Would you explain for the Hearing 7 Officer? 8 A. Again, a "landfill unit" is a 9 specific term defined in the solid waste 10 rules -- 11 Q. And sorry to interrupt, but please 12 feel free to cite definitions if you would 13 prefer. 14 A. Thank you. It's easier for me to 15 read than to remember, sometimes. This one, the 16 same cite, 335-13-1-.03, in this case, paren 73, 17 says, A Landfill Unit - this term shall include 18 MSWLF, or a municipal solid waste landfill, 19 C/DLF, construction and demolition landfill, 20 ILF, industrial landfill units. 21 Those are also defined terms in the rules. 22 Q. Okay. 23 A. So if you will indulge me for a</p>	<p style="text-align: right;">Page 623</p> <p>1 approval, will not be granted until such time as 2 they meet whatever requirements the Corps or any 3 other entity -- and I believe the only one 4 that's outstanding is their Corps permit. There 5 were no historical issues or endangered-species 6 issues at this particular facility. 7 Q. And speaking of the Corps, is that 8 normally something where different agencies -- I 9 mean, are they required to work separately, or 10 can they work simultaneously toward permitting a 11 facility? 12 A. Yeah. They -- if there are 13 issues -- and this is not the first time that a 14 wetlands has been part of a -- either a 15 development or an expansion of the 16 landfill -- those are normally a parallel 17 process. The applicant, in this case, the City, 18 will work with the Corps towards doing whatever 19 permitting requirements the Corps has under 20 Section 404 of the Clean -- the Federal Clean 21 Water Act, simultaneously with going through the 22 process under the solid waste rules to obtain 23 their solid waste permit.</p>
<p style="text-align: right;">Page 622</p> <p>1 moment. Same cite, paren 86, says the 2 definition of municipal solid waste landfill, 3 MSWLF Unit is, A discrete area of land or an 4 excavation that receives household waste that is 5 not a land application unit, surface 6 impoundment, injection well, or waste pile. 7 And then it goes on with some other things 8 about what it can and cannot receive. 9 Q. Okay. 10 A. So from -- from that definition, 11 again, a landfill unit is one that receives 12 these wastes. These landfill units that are the 13 subject of this expansion or this modification 14 will not be able to receive waste until such 15 time as they are verified and authorized to 16 receive waste from the Department. 17 Q. Okay. And that's where you're 18 referring back to the Certification of 19 Construction? 20 A. That's correct. 21 Q. Okay. 22 A. And as I said earlier, that 23 certification from the Department, that</p>	<p style="text-align: right;">Page 624</p> <p>1 Q. Okay. Now, also, there's been 2 discussion in one of the -- well, the 3 permittees -- not permittees -- excuse me, I'm 4 sorry. The Petitioners are also mentioning that 5 the permit is in error by allowing the use of 6 alternative daily cover. Are you familiar 7 with -- with that section of this permit? 8 A. That section isn't in this permit. 9 Q. And why would that be? 10 A. The applicant did not request it, 11 and the Department did not grant authority to 12 use alternative daily cover. 13 Q. And what would -- in the future if 14 they chose to request it, what would happen? 15 A. It would be processed as a 16 variance to the permit, and our approval would 17 be specifically laid out as a variance and would 18 also include a listing of whatever cover or 19 cover materials they choose would -- would be 20 granted. 21 Q. Okay. And speaking of a variance, 22 how -- I think there's been some testimony. At 23 one time, were variances granted by letter?</p>

<p style="text-align: right;">Page 625</p> <p>1 A. They were. They were requested 2 and granted by -- by letter. 3 Q. Okay. Has that -- that 4 proced -- that since changed? 5 A. Yes. When I was Chief of the 6 Solid Waste Branch -- and I want to say this was 7 in '08 or '09, I believe -- we went to a 8 process -- two things happened that led to this 9 change. One was we started using -- instead of 10 inspections being done out of the Solid Waste 11 Branch within the Land Division, landfill 12 inspections went to our remote field offices. 13 So we put landfill inspectors in each of our 14 four field offices that do nothing but inspect 15 solid waste landfills. And so for -- for their 16 purpose, to make sure everything was there and 17 concise within whatever documents, we -- we made 18 this change. But also around that same time, 19 maybe a little before, the Department went to a 20 system where our Departmental files are 21 available on our website. And so we wanted to 22 be as transparent as possible with the public on 23 what the actual requirements for the facilities</p>	<p style="text-align: right;">Page 627</p> <p>1 BY MR. CARTER: 2 Q. Okay. The -- what's the first 3 variance for? 4 A. Again, under -- under Section 5 10 -- or X if you're not Roman -- Point Number 6 1, The Permittee is granted a variance from ADEM 7 Rule 335-13-4-.20 paren 2, paren c, 2, requiring 8 that the maximum final grade of the final cover 9 system shall not exceed 25 percent, or four to 10 one. The Permittee shall construct a final 11 cover system with three to one final slopes as 12 shown on the final closure drawings [verbatim] 13 dated January 15th, 2015. 14 And it refers back to a previous section, 15 VIII.A., Roman VIII.A. of the permit. 16 Q. Okay. Now, when a permittee 17 requests a variance, how -- do they fill out a 18 form to request a variance? 19 A. There -- there is no prescribed 20 form for a variance, no. 21 Q. Okay. So how -- in this 22 situation, how was a request for variance made? 23 A. In this particular situation, the</p>
<p style="text-align: right;">Page 626</p> <p>1 were. So the thought was that by amending or 2 revising the permit to put the variance in, a 3 member of the public, if they wanted to see what 4 XYZ Landfill was subject to, they wouldn't have 5 to look through the past several years for 6 letters and memos and those kind of things, that 7 they could look at the permit, and the current 8 version of the permit would be, you know, in a 9 single point, all of the applicable requirements 10 for that facility under the solid waste rules. 11 Q. Okay. And now you did mention 12 earlier, in this particular permit, the 13 modification 35-06, there are variances; is that 14 correct? 15 A. There are two, yes. 16 Q. Okay. I tell you -- it's Section 17 Roman Numeral X of the permit, if you would turn 18 to it, and that's Joint Exhibit Number 1. 19 HEARING OFFICER: Is that P-1 or 20 Joint 1? 21 MR. CARTER: Joint Exhibit Number 22 1, Your Honor. 23 HEARING OFFICER: Thank you.</p>	<p style="text-align: right;">Page 628</p> <p>1 request for variance was within their entire 2 application. It was -- it was in their 3 operations plan where it was discussed as a 4 three-to-one slope, final slope on their MSW 5 cells. It was also -- as stated in the 6 variance here -- in accordance with the 7 drawings. Their -- their plans, their design 8 drawings, clearly showed a -- an alternate or 9 different slope for the MSW cell than the four 10 to one. 11 Q. And so based on the review of that 12 information, the variances were granted? 13 A. Yes. 14 Q. This particular variance was 15 granted; is that right? 16 A. Yes, right. In this case, the 17 applicant also submitted the static stability 18 analysis specific to the -- the slope stability, 19 if you will, for the final cover system of the 20 MSW cells. 21 Q. Okay. So I don't think at any 22 point did we have to request additional 23 information or anything to --</p>

<p style="text-align: right;">Page 629</p> <p>1 A. I don't believe we did. I think 2 there may have been an exchange of 3 communications between us and the applicant, 4 just to affirm that. Normally, in a process 5 like this, we'll -- we'll do a rough draft of 6 the permit and provide that to the applicant or, 7 in this case, their consultant for review, just 8 to make sure before we go to the public that 9 everything's there that was intended, and that 10 there's nothing there that's not. And that's 11 not unusual in all of the programs I've worked 12 in to provide a draft permit to the applicant 13 before we go through the formal review process. 14 Q. Okay. So as for variances, the 15 application is the request? 16 A. Yes, yes, in this case. And, 17 again, that's -- that's routine when you're 18 doing a major modification like this or even a 19 renewal. The only time that you would get a 20 specific variance request would be if you're in 21 the -- you know, the term of the permit, and the 22 only action being requested by the applicant 23 would be the granting of a particular variance.</p>	<p style="text-align: right;">Page 631</p> <p>1 you describe -- 2 A. Yeah. The rules don't prescribe 3 what a particular landfill -- there's no numeric 4 definition of "as small an area as possible." 5 It is something that is dependent upon the 6 resources and the ability of the permittee to 7 operate the landfill, and it varies from 8 facility to facility. But effectively, what it 9 is, is the permittee, either at the end of the 10 day or the end of the week, depending on the 11 type of material, either MSW or C&D, has to be 12 able to fully compact and provide daily cover 13 for that material, and they have to have the 14 personnel, the equipment, and other resources in 15 order to accomplish that. 16 Q. And you, with your review of the 17 permit and application, you were satisfied that 18 Dothan -- the City of Dothan was able to do 19 that? 20 A. We were. We were. 21 Q. Okay. If you would, there's, I 22 think, Chapter 8 regulations that are referred 23 to, and I think it's --</p>
<p style="text-align: right;">Page 630</p> <p>1 Q. Okay. And then I think you -- I 2 mean -- and that would be done by a -- you'd 3 change the permit? 4 A. That's right. We would make an 5 amendment or revision to the permit. It's not a 6 modification as defined by the rules, but we do 7 do a physical revision to the permit so that 8 it's reflected within the terms of the permit 9 that the variance is granted. 10 Q. Okay. And, now, what's on the 11 other variance that was -- that was stated? 12 A. The second variance that's granted 13 in -- in Section X of the permit, A variance is 14 granted from, again, Rule 335-13-4-.23 paren 1, 15 Paren c, requiring waste to be confined to as 16 small an area as possible. The Permittee has 17 been approved to operate two working faces. The 18 working faces must be confined to as small an 19 area as possible. 20 And, again, it refers to Section Roman 21 III.J. of the permit. 22 Q. Okay. And now, I think -- help me 23 out with "as small an area as possible." Can</p>	<p style="text-align: right;">Page 632</p> <p>1 A. R-2. 2 Q. Right, okay. If you would refer 3 to those, there's -- we -- in the Section 4 335-13-8-.02, it talks about a petition for 5 variance? 6 A. It does. 7 Q. Okay. And basically, in Section 2 8 of that, it talks about the requirements for 9 petition for variance. Now, in Section (a), it 10 does speak of, A clear and complete statement of 11 the precise extent of the relief sought 12 including specific identification of the 13 particular provisions of the regulations from 14 which the variance is sought. 15 In your review of the permit and 16 application, was there a clear and complete 17 statement of the precise extent of the relief 18 sought? 19 A. It does. If you -- if you look in 20 Section 2 -- that was the specific requirement 21 in (a) -- but in Section 2, Petition 22 Requirements, it says, To enable the Department 23 to rule on the Petition for Variance, the</p>

<p style="text-align: right;">Page 633</p> <p>1 following information, where determined 2 applicable by the Department, shall be included 3 in the petition. 4 So these requirements, (a), (b), and (c), 5 (d), and (e), are there for the Department's use 6 to whatever extent that we need in order to make 7 a determination on the request for variance. So 8 to the extent that -- that we determine 9 what -- do we have what we need, then we can ask 10 for more or less, depending on what is 11 submitted. In this case, since we had design 12 drawings, operational plan, with a number of 13 locations throughout the plan that each of these 14 two variances were discussed, mentioned, pointed 15 out, then -- as well as the technical 16 information in the case of the slope for the 17 static stability analysis, that was sufficient 18 information for us to make a determination. 19 Q. Okay. So there was no -- we 20 didn't -- the Department did not request 21 additional information? 22 A. Not that I recall, no. 23 Q. Okay. Now, with that -- I mean,</p>	<p style="text-align: right;">Page 635</p> <p>1 three-to-one slope. Three-to-one slope is, 2 again, fairly routine and fairly widely 3 implemented from an engineering perspective. 4 Q. Okay. So there was no concern 5 over the -- either of these variances? 6 A. No, no. Certainly not, you know, 7 based on the information that we received in the 8 application. 9 Q. And also, I mean, through the 10 reg -- isn't -- if there is a problem in the 11 future, can't the Department terminate a 12 variance? 13 A. Absolutely, absolutely. 14 There -- if it's shown that -- that the granting 15 of these variances do cause issues, if for 16 whatever reason -- I'll give you an example on 17 the two working faces. Whatever reason Dothan 18 doesn't have the same type of equipment or 19 manpower resources that they currently have, and 20 it's shown that they cannot manage the two 21 working faces in the future, then, yes, we can 22 withdraw our approval of that and pursue 23 different action. Yes.</p>
<p style="text-align: right;">Page 634</p> <p>1 as far as that -- would that apply to both 2 variances? 3 A. Yes, yes. These are -- both the 4 three-to-one slope, as well as the two working 5 faces are fairly common. More than half, 6 probably closer to two-thirds, of all the 7 landfills in the state have some sort of 8 variance. So variances are not uncommon, and I 9 would say two working faces and alternate slopes 10 are two of the more common types of variances 11 that are granted. 12 Q. Okay. So these -- these -- they 13 weren't unique to the City of Dothan? 14 A. They were not. They were not. 15 And I would say within those, the fact that 16 Dothan has two distinct disposal areas makes two 17 working faces somewhat implied. They weren't 18 asking for, you know, two different MSW working 19 faces or a special working face for a special 20 waste or some of the other -- I would classify 21 them as different. These were two 22 separate working -- or two separate disposal 23 areas, each with its own work face, and then the</p>	<p style="text-align: right;">Page 636</p> <p>1 Q. So -- and correct me if I'm wrong. 2 Your testimony is basically, the issuance of the 3 permit is based largely on the contents of the 4 application? 5 A. Absolutely, absolutely. 6 Q. And is there -- somewhere with 7 that application, is that -- is the application 8 part of the permit? 9 A. It is. It's incorporated by 10 reference. 11 Q. Okay. And so if -- if the 12 facility is not operated or designed in 13 accordance with that application, is that 14 something the Department would act on? 15 A. It is, and actually, in two ways. 16 Again, going back to the cell certification that 17 we discussed earlier, the applicant is going to 18 have to certify, or he's going -- the applicant 19 will have to get a registered professional 20 engineer to certify it, to put his stamp on the 21 fact that this was, you know, constructed and is 22 ready to operate in accordance with that 23 approved design. So if there are aspects of the</p>

<p style="text-align: right;">Page 637</p> <p>1 design that are not met, that will be the first 2 stop, if you will, that that PE would not be 3 able to certify legally. 4 Q. Right. 5 A. And then we would do, to our 6 extent, our ability, to inspect and review and 7 verify that. 8 Q. Okay. And I -- okay. So I guess 9 to wrap up here -- first, let me ask you a 10 couple -- just a few more questions. 11 A. Sure. 12 Q. Okay. Does the solid waste 13 disposal permit, 35-06, authorize landfill units 14 to be located in wetlands in violation of 15 Alabama Code Rule 335-13-4-.01 (2)(c)? 16 A. Absolutely not. 17 MR. LUDDER: Objection. 18 HEARING OFFICER: Overruled. 19 A. Absolutely not. 20 Q. Now, does the solid waste disposal 21 permit authorize the discharge of pollutants 22 into waters of the State in violation of Alabama 23 Administrative Code Rule 335-13-4-.01 (2)(a)?</p>	<p style="text-align: right;">Page 639</p> <p>1 HEARING OFFICER: Overruled. 2 A. If I understood the wording of 3 your -- I will say it authorizes the operation 4 of two working faces, but not in violation of 5 the rule that you read. 6 Q. Right. It author -- is it -- is 7 it authorizing a working face for C&D? 8 A. It does. It authorizes two 9 working faces, one for the C&D area, one -- and 10 that's the variance. The other is the MSW that 11 is, I guess, inherent in the permit. 12 Q. Okay. And does Solid Waste 13 Disposal Facility Permit 35-06 authorize the 14 permittee to construct a final cover system with 15 a maximum grade or slope of three to one in 16 violation of Alabama Administrative Code 17 335-13-4-.20 (2)(c)(2)? 18 MR. LUDDER: Same objection. 19 HEARING OFFICER: Overruled. 20 A. It is not in violation of that 21 because of the properly issued variance. 22 HEARING OFFICER: That's your 23 opinion, right?</p>
<p style="text-align: right;">Page 638</p> <p>1 MR. LUDDER: Same objection. 2 HEARING OFFICER: Overruled. 3 A. Absolutely not. 4 Q. Okay. Does the solid waste 5 disposal permit, 35-06, authorize municipal 6 solid waste landfills and construction and 7 demolition and inert landfill units to be 8 covered periodically with materials other than 9 earth in violation of Code Section 22-27-2? 10 MR. LUDDER: Objection. 11 HEARING OFFICER: Same objection 12 from the Petitioner. Overruled. 13 A. Same answer from the Witness. 14 Absolutely not. 15 Q. Okay. Does Solid Waste Disposal 16 Facility Permit Number 35-06 authorize the 17 permittee to operate two working faces -- 18 MR. LUDDER: Objection -- I'm 19 sorry. Go ahead. 20 Q. -- in violation of Alabama Code 21 Rule 335-13-4-.22 (1)(b) and 335-13-4-.23 22 (1)(c)? 23 MR. LUDDER: Objection.</p>	<p style="text-align: right;">Page 640</p> <p>1 THE WITNESS: In my opinion, yes, 2 as the permit -- as the permit issuer. 3 BY MR. CARTER: 4 Q. Okay. And now -- and also, as it 5 pertains to the variances, do you believe these 6 after what -- your review of the permit and the 7 application and everything associated with it, 8 do you believe that these variances threaten the 9 public health or unreasonably create 10 environmental pollution? 11 A. Absolutely not. Would not have 12 issued the permit if I did. 13 Q. And does the permit reflect that? 14 A. It does reflect that, yes. 15 Q. Could you show us where? 16 A. Well, it's -- it's in a couple of 17 places, but I will, gladly. In the Final 18 Determination which, in J-1, is the second page. 19 There's a cover letter, and then there's a Final 20 Determination. A statement is made that the 21 Land Division, which I am the Chief of, has 22 determined that the modification of this permit 23 meets the applicable requirements of ADEM's</p>

<p style="text-align: right;">Page 641</p> <p>1 Administrative Code Division 13. Within 2 Division 13 is the requirement that the -- the 3 purpose of those regs is to -- well, I'll read 4 you what the purpose of the regs is, and 5 the -- and the statutory authority. The 6 purpose, which is 335-13-1-.01, says, The 7 purpose of this Division is to establish minimum 8 criteria for the use under the Act, as amended, 9 primarily for the disposal of solid waste and 10 the design, location and operation of landfill 11 units. 12 In the Act, it talks about the preservation 13 of human health and the environment. So these 14 rules, compliance with these rules, is equated 15 to preservation of human health and the 16 environment. The other place that it's -- it's 17 mentioned -- again, if you look on the cover 18 page, which is the third page of J-1, there is a 19 statement that says -- and it's about 20 three-quarters of the way down above the 21 issuance date of the permit. 22 In accordance with and subject to the 23 provisions of the Alabama Solid Wastes and</p>	<p style="text-align: right;">Page 643</p> <p>1 Q. And then after -- after hearing 2 the testimony and everything so far that has 3 occurred in this hearing, do you still stand by 4 that decision? 5 A. Absolutely, absolutely. 6 MR. CARTER: Okay. Nothing further 7 at this time, Your Honor. 8 HEARING OFFICER: All right. I 9 think it would be 10 appropriate -- Mr. White, do you 11 have questions, if any? 12 MR. WHITE: No, sir. 13 HEARING OFFICER: All right. 14 Cross? 15 MR. LUDDER: Yes. 16 MR. WHITE: May we take a -- 17 HEARING OFFICER: Yes. What do you 18 need? Five or ten? 19 MR. WHITE: Five, ten? 20 HEARING OFFICER: All right. We'll 21 go with ten then. 22 (A brief recess was taken.) 23 HEARING OFFICER: All right. We</p>
<p style="text-align: right;">Page 642</p> <p>1 Recyclable Materials Management Act, as amended, 2 Code of Alabama 1975, Sections 22-27-1 to 3 22-27-27, or SWRMMA, S-W-R-M-M-A, and the 4 Alabama Environmental Management Act, as 5 amended, Code of Alabama 1975, Sections 22-22A-1 6 to 22-22A-15, and the rules and regulations 7 adopted thereunder, and subject to the 8 conditions set forth in this permit, the 9 Permittee -- Permittee is hereby authorized to 10 dispose of the above-referenced [verbatim] solid 11 wastes at the above-described facilities 12 [verbatim]. 13 Again, it references back to the Solid 14 Waste Act and to the -- the Department's overall 15 enabling Act, which is the Environmental 16 Management Act. 17 Q. Okay. And based on your review of 18 the permit, the draft permit, the comments, the 19 application, you saw fit to issue this permit? 20 A. I did. 21 Q. Okay. 22 (A discussion was held off the 23 record.)</p>	<p style="text-align: right;">Page 644</p> <p>1 got everybody here? We ready? 2 MR. LUDDER: Yes, sir. 3 HEARING OFFICER: Cross. 4 CROSS-EXAMINATION 5 BY MR. LUDDER: 6 Q. All right. Mr. Davis, you were 7 present in the hearing room during all the 8 testimony in this case, weren't you? 9 A. I was. 10 Q. And did you hear the testimony of 11 Jared Kelly and Scott Story? 12 A. I did. 13 Q. Did you agree with their 14 testimony? 15 A. In total or in -- is there a 16 specific point? 17 Q. Well, are there any exceptions to 18 their testimony that you would make? 19 A. I think one of them -- and I don't 20 recall who, forgive me for that without looking 21 back at the record -- said something about a 22 condition in the permit was worded poorly. I 23 would probably not agree with that.</p>

<p style="text-align: right;">Page 645</p> <p>1 Q. Okay. Anything else?</p> <p>2 A. Not specifically, no.</p> <p>3 Q. Okay. You testified that -- that</p> <p>4 you reviewed portions of the application before</p> <p>5 the permit was issued. Could you tell us,</p> <p>6 perhaps, how many hours you spent reviewing the</p> <p>7 application during that time period?</p> <p>8 A. The public comment period</p> <p>9 ended, I want to say, in early November, and we</p> <p>10 received -- forgive me -- three, four, five</p> <p>11 comments. I don't remember specifically. Those</p> <p>12 raised a number of issues that we later</p> <p>13 addressed in our response to comments. So once</p> <p>14 the comments were received, I read the comments</p> <p>15 and looked at both the proposed permit, as well</p> <p>16 as looked through the application at that time,</p> <p>17 and then again when the staff prepared its draft</p> <p>18 response to comments, I reviewed that response</p> <p>19 to comments, and I believe probably just</p> <p>20 verified some things in the application, because</p> <p>21 at that time, it had been a month or two since I</p> <p>22 had looked previously. So it would be hard to</p> <p>23 quantify as far as number of hours. I wouldn't</p>	<p style="text-align: right;">Page 647</p> <p>1 your response to your review of the application.</p> <p>2 A. Uh-huh.</p> <p>3 Q. Did that occur in one day?</p> <p>4 A. Then I would say no.</p> <p>5 Q. Okay. Over how many days did that</p> <p>6 occur?</p> <p>7 A. I would say at least two, one in</p> <p>8 November and one in January, but there could</p> <p>9 have been other days when I spent time looking</p> <p>10 at it.</p> <p>11 Q. All right. And you wouldn't have</p> <p>12 taken the entire day to be looking at it?</p> <p>13 A. No. No, I wouldn't have.</p> <p>14 Q. You would be focusing on specific</p> <p>15 issues, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And would those issues have been</p> <p>18 restricted to the issues that were raised in the</p> <p>19 comments?</p> <p>20 A. At that time, yes.</p> <p>21 Q. Okay. And do you recall what the</p> <p>22 comment issues were?</p> <p>23 A. Probably not entirely. I remember</p>
<p style="text-align: right;">Page 646</p> <p>1 say it was a detailed review by any means as</p> <p>2 would be, like, a permit writer. But it was</p> <p>3 enough to familiarize myself with both the</p> <p>4 subject of the comments as well as our response</p> <p>5 to those comments and the conditions of the</p> <p>6 permit with regard to those.</p> <p>7 Q. Would you have been able -- or did</p> <p>8 you accomplish that review in one day?</p> <p>9 A. No. As I said, it was -- it was</p> <p>10 at different times. I looked at the comments</p> <p>11 when they were received in, again, early</p> <p>12 November, as best that I recall, and did some</p> <p>13 type of review at that time as we began</p> <p>14 formulating what our responses to the comments</p> <p>15 would be, and then again, certainly at the end</p> <p>16 when we finalized the response to comments,</p> <p>17 which would have been probably early January,</p> <p>18 just before the permit was issued. And I can't</p> <p>19 say, honestly, if, during the interim -- I'm</p> <p>20 sure there were discussions, and whether I did</p> <p>21 or didn't actually look at the application, I</p> <p>22 don't recall.</p> <p>23 Q. Yeah, I'm just trying to confine</p>	<p style="text-align: right;">Page 648</p> <p>1 there were comments received mentioning</p> <p>2 wetlands. I remember there were comments</p> <p>3 received about property values, noise, dust,</p> <p>4 those types of issues. I remember there were</p> <p>5 comments received about the demographics of the</p> <p>6 location or the area where the landfill is</p> <p>7 located, and we also got requests, at least</p> <p>8 one -- possibly more -- requests for a hearing,</p> <p>9 as I recall.</p> <p>10 Q. Okay. Did the Department grant</p> <p>11 any hearing requests?</p> <p>12 A. We did not.</p> <p>13 Q. Could you explain why?</p> <p>14 A. We addressed that in the response</p> <p>15 to comments. My recollection was because there</p> <p>16 were only, as I said, three, four, five requests</p> <p>17 for hearing, and -- or stints of comments -- and</p> <p>18 not all of the commentators requested hearings,</p> <p>19 plus there had been a hearing on the landfill</p> <p>20 renewal in 2013, and specific to this expansion,</p> <p>21 there had been a public hearing when the City</p> <p>22 granted local host-government approval, then our</p> <p>23 decision was that we would not hold a public</p>

<p style="text-align: right;">Page 649</p> <p>1 hearing. It's a discretionary decision within 2 our authority. 3 Q. And the hearing that was held for 4 the local host-government decision, that was 5 sponsored by the City of Dothan, wasn't it? 6 A. Yes, the City -- 7 Q. Not ADEM? 8 A. That's correct. Under the state 9 law, the local host government for a landfill, 10 in this case, Dothan, is required -- before 11 granting that host-government approval, they are 12 required by law to hold a public hearing, and 13 they did so, I want to say in '14, 2014. 14 Q. So with the issuance of this 15 modified permit, you had a number of changes 16 since the 2013 permit, correct? 17 A. We had the expansion of the MSW 18 disposal area and the addition of the C&D 19 disposal area. 20 Q. As well as the two variances? 21 A. And the two variances, yes. 22 Q. And you did not deem it necessary 23 to hold a public hearing on those changes?</p>	<p style="text-align: right;">Page 651</p> <p>1 Q. Okay. So in this case, the 2 Department has not approved an alternative 3 cover? 4 A. That's correct. 5 Q. Now, if the City of Dothan wishes 6 to request approval for alternative cover, they 7 would submit a request to the Department, right? 8 A. They would. 9 Q. And if the Department was inclined 10 to grant that request, and if that was the only 11 change in the permit, would the Department go to 12 public notice? 13 A. We would not. There's no 14 requirement in the regs for public notice for a 15 granting of a variance. 16 Q. I understand. Is the granting of 17 a variance an appealable action? 18 A. Yes. 19 Q. To the Commission? 20 A. It is. It is an administrative 21 action, yes. 22 Q. And how much time does an 23 aggrieved party have to file an appeal?</p>
<p style="text-align: right;">Page 650</p> <p>1 A. I did not. 2 Q. Okay. With respect to alternative 3 covers, your testimony, if I'm correct, was that 4 the permit, Exhibit J-1, does not authorize an 5 alternative cover, correct? 6 A. That is correct. 7 Q. And would you look at Exhibit J-1 8 at -- at Page 8 of the permit? 9 A. 8 of 14? 10 Q. Yes. 11 A. Okay. 12 Q. Paragraph H, Cover Requirements. 13 Could you just read that first sentence? 14 A. Sure. 15 Cover requirements, the Permittee shall 16 cover all wastes as required by 335-13. 17 Q. All right. Does 335-13 -- or 18 excuse me. 19 Does 335-13 authorize the use of 20 alternative cover material if approved by the 21 Department? 22 A. If approved by the Department, 23 yes, and if requested by the applicant.</p>	<p style="text-align: right;">Page 652</p> <p>1 A. I believe it's 30 days. Give me 2 one moment. I am looking in our response to 3 comments that was sent out to the commentors on 4 January 8th. In the cover letter we actually 5 say what that is. It's in Division 2 of our 6 rules. 7 Q. Okay. 8 A. I don't know the -- I think it's 9 30. It may be more than that. 10 Q. That's fine, that's fine. So if 11 you don't issue public notice, how would a 12 person aggrieved find out if the Department has 13 granted an alternative cover variance? 14 A. Well, there's two ways. 15 Q. Okay. 16 A. Any party can -- as I mentioned 17 earlier -- can check our website and look in our 18 eFile system. If there's a particular facility 19 that they're interested in, they can 20 monitor -- I guess I'll call them the goings-on 21 at that facility -- through that system. Or if 22 they're like me and they're an old dinosaur, 23 they can arrange file reviews or request copies</p>

<p style="text-align: right;">Page 653</p> <p>1 of files, specifically, rather than going 2 through the internet site. 3 Q. And an aggrieved person would have 4 to be sure to pick the right 30-day period in 5 order to find that file? 6 A. As with a number of our programs 7 and a number of our actions, not all of them are 8 required to go through a public comment period 9 either by state or federal regulation. 10 Q. And you would not -- or the 11 Department would not provide notice of a 12 variance granted for an alternative cover to the 13 adjoining property owners? 14 A. We would not. 15 Q. So unless -- unless a person 16 monitored the website continuously, there would 17 be no way for them to know whether an 18 alternative cover variance has been granted? 19 A. Well, no, as I mentioned earlier, 20 they could -- they could certainly, on a routine 21 basis, review the file personally rather than 22 through the website. 23 Q. And that would require a trip to</p>	<p style="text-align: right;">Page 655</p> <p>1 changes to Department rules, aren't you? 2 A. Yes. 3 Q. So you could change the rule to 4 require public notice? 5 A. We could, yes. Well, we don't do 6 rules. The Commission adopts -- 7 Q. I know. You could suggest a 8 change to the Commission? 9 A. Sure we could. 10 Q. All right. If you would, turn to 11 J-1 -- I'm sorry. Let's -- let's stay with that 12 same page, 8-14, Paragraph H, which talks about 13 cover requirements. The cover requirement for a 14 municipal solid waste landfill -- the minimum 15 cover requirement -- is, I believe, six inches 16 of earth at the end of each day unless there's 17 an alternative cover, correct? 18 A. That is correct. 19 Q. I don't see it right now, but is 20 there a provision in the permit that specifies 21 six inches? 22 A. I don't think the permit 23 specifically specifies daily cover extent. It</p>
<p style="text-align: right;">Page 654</p> <p>1 Montgomery? 2 A. Or by letter, they could request 3 the file. You could -- you could request if you 4 have that much interest in a particular 5 facility. 6 Q. So, like, you can request all 7 documents filed in the last 30 days? 8 A. Sure. That's -- that's -- that 9 very reason is one reason that the Department, 10 10 or 12 years ago, went to an 11 internet -- internet-based file system to allow 12 greater transparency to the public. 13 Q. Why doesn't the Department provide 14 public notice of variances for alternative 15 covers? 16 A. As I said, it's not required by 17 state or federal regulations for a number of 18 actions, including the granting of variances. 19 Q. Just because it's not required 20 doesn't prohibit you from doing it, correct? 21 A. No, it doesn't. That's correct. 22 Q. And the Department -- you're 23 basically responsible for, I assume, suggesting</p>	<p style="text-align: right;">Page 656</p> <p>1 does it by reference to that -- the rule -- the 2 portion of that condition that I read earlier -- 3 Q. Right. 4 A -- that refers you back to the 5 regulations. 6 Q. And those regulations specify a 7 minimum of six inches of cover, right? 8 A. That's correct. 9 Q. Now, you were present for the 10 testimony of a number of witnesses on the first 11 day that expressed dissatisfaction with odors 12 from the landfill. Does the Department have the 13 authority to require more cover than six inches? 14 A. We could, yes. 15 Q. And why hasn't the Department done 16 that in this case? 17 A. In this case, as part of our 18 routine inspections of the Dothan landfill, just 19 as with any other landfill, one of the things 20 that our inspectors observe, if you will, is for 21 the presence of unusual odors. There -- there 22 is an odor with an MSW landfill. It is not an 23 odor-free proposition. But what our inspectors</p>

<p style="text-align: right;">Page 657</p> <p>1 are looking for is twofold. Number one, are 2 there odors that are unusually strong or 3 different than what one would expect to detect 4 from a properly operated -- that is, in 5 accordance with the regulations, six inches of 6 cover, compaction and those kind of things? And 7 then, are they covering -- are they doing the 8 things to control odors, dust, litter, 9 scavenging vectors. So if we found a situation 10 at Dothan or any other MSW landfill that had 11 unusually strong odors, or unusual odors, or 12 prevalent odors that were out of the realm of 13 reason of what our inspectors, who are 14 experienced and nationally certified for 15 landfill operations, if -- if they detect those, 16 then one of the options that we would have is to 17 change the cover requirements to possibly go to 18 more cover in the case of an MSW, or possibly 19 more frequent for a C&D, although one wouldn't 20 expect those types of odors because of the type 21 of inert materials that you put in a C&D 22 disposal cell. 23 Q. So if your inspectors don't detect</p>	<p style="text-align: right;">Page 659</p> <p>1 authorize a municipal solid waste landfill to 2 cover waste material in the landfill with the 3 same kind of waste material? 4 A. No, likely not. If it's municipal 5 solid waste, I think was your question, because 6 municipal solid waste is putrescible by its 7 nature, so you would not want to cover 8 putrescible waste with other putrescible waste 9 because of the potential for vectors, odors, so 10 forth. 11 Q. Okay. In the case of the 12 Arrowhead Landfill, did the Department authorize 13 the -- the waste that was being disposed of 14 there with the same kind of -- did it authorize 15 a cover using the same waste that -- that was 16 being disposed of there? 17 A. No. 18 Q. All right. Could you explain 19 that? 20 A. Absolutely. 21 Q. Thank you. 22 A. The waste at Arrowhead, there are 23 two primary waste streams that were authorized.</p>
<p style="text-align: right;">Page 658</p> <p>1 unusual odors, but the residents around the 2 landfill can't enjoy their -- their outdoor 3 property, that's not enough of a reason to 4 require more cover? 5 A. No, it's not. Because the 6 regulations and the requirements, the minimum of 7 six inches, the daily cover, is also compliant 8 with the Federal Municipal Solid Waste Landfill 9 Operational Requirements that are in the federal 10 regulations that were adopted in 1992, I 11 believe. So those are national standards for 12 the operation of this type of landfill. 13 Q. Those are minimum standards? 14 A. They are minimum standards, yes. 15 Q. Now, the alternative covers that 16 are authorized for use at landfills, I saw -- or 17 we saw a reference the other day in the rules 18 that alternative cover might include waste? 19 A. It can. Waste materials, yes. 20 Q. Okay. And you heard the testimony 21 of one of the witnesses discussing that? 22 A. Yes. 23 Q. Would the Department ever</p>	<p style="text-align: right;">Page 660</p> <p>1 One is the municipal solid waste. The other was 2 remediation waste that was generated under an 3 action under EPA's authority under CERCLA. 4 Q. And what was that remediation 5 waste? 6 A. It was from a spill at a TVA 7 plant. It was CERCLA remediation waste. That's 8 the type of waste that's -- that's how it's 9 classified. 10 Q. All right. Is there a name to 11 that waste in the permit? 12 A. The approval was for remediation 13 waste, yes. 14 Q. It didn't say "coal ash"? 15 A. It contains coal ash, but it's not 16 completely coal ash. 17 Q. Okay. 18 A. So the more correct term is CERCLA 19 remediation waste. 20 Q. Okay. What was the cover material 21 authorized in that case? 22 A. One of the alternate cover 23 materials was coal ash, which is generated at</p>

<p style="text-align: right;">Page 661</p> <p>1 power-generating facilities. 2 Q. And did the facility operate using 3 coal ash cover? 4 A. To my knowledge, they never used 5 it. 6 Q. Okay. So to your knowledge, they 7 used earth as cover? 8 A. Yes. 9 Q. On a daily basis? 10 A. Yes. 11 Q. Okay. 12 A. Of course, the Dothan facility has 13 no authorization for alternate cover. 14 Q. I understand, I understand. Now, 15 you heard the testimony that the final cover 16 slope -- that a variance was granted for the 17 final cover slope to be three to one, correct? 18 A. That's correct. 19 Q. And do you understand that the 20 slope of the, I guess, working face, or the 21 "daily slope" as I'll call it, the period of 22 time prior to closure, that slope is supposed to 23 be four to one?</p>	<p style="text-align: right;">Page 663</p> <p>1 Q. Okay. Is that going to require a 2 lot more dirt or earth to achieve that? 3 A. It would require more than if you 4 just put a -- a single layer, but because of the 5 terrace system and the advantages that the 6 applicant felt that it gets from that design, 7 they determined it to be worth it. 8 Q. Okay. Do you expect the City to 9 come back to the Department and ask for a 10 three-to-one slope on the working slope? 11 A. I would not. 12 Q. No? 13 A. No. Terraces are fairly common. 14 Q. I understand terraces are common. 15 Can you think of any other landfill in the state 16 of Alabama that has a four-to-one working slope 17 and a three-to-one final slope? 18 A. As I said earlier, three-to-one 19 slopes, whether final, or final and working, are 20 fairly common. Off the top of my head, no, but 21 I could certainly -- we could go through the 22 file and find them, I would say. 23 Q. All right.</p>
<p style="text-align: right;">Page 662</p> <p>1 A. That's correct. 2 Q. Now, can you explain to me how you 3 can, in an engineering -- how you can engineer a 4 final slope of three to one when you have been 5 operating with daily slopes of four to one? 6 A. I can. 7 Q. Please do. 8 A. The working slope is going to be 9 at a four to one -- I'm a visual person. I wish 10 I had a chalkboard. It's going to be at a 11 four-to-one slope. As I think Mr. Wells 12 testified, the final cover system is going to be 13 at a three to one to a terrace. Then it will 14 terrace back, then three to one, and then a 15 terrace. So you get an effective slope of that 16 final cover system at a -- probably about a 17 three-and-a-half to one, but because of the 18 terrace system, which will help with erosion, 19 sliding, moving water, all of those kinds of 20 things, the terrace system, in essence, is how 21 you construct that final slope at something 22 other than parallel, if you will, to the working 23 slope.</p>	<p style="text-align: right;">Page 664</p> <p>1 A. Because terraces are common, and 2 in a terrace situation, you would -- you would 3 have a different slope because of the terrace 4 system. 5 Q. Right. We discussed the two 6 variances for the Dothan landfill, and you 7 referred to the regulations, 335-13-8. 8 A. Exhibit R-2? 9 Q. I believe so, yes. Would you read 10 the last sentence. In Rule .01? 11 A. Variances, per se, are not favored 12 by the Department. 13 Q. So -- I'll -- I'll just withdraw 14 that. 15 A. Can I withdraw my answer as well? 16 Q. No. I withdraw my next question. 17 A. Oh, okay. 18 HEARING OFFICER: The So-part, you 19 mean. 20 MR. LUDDER: Yeah. 21 THE WITNESS: Oh, yeah. 22 BY MR. LUDDER: 23 Q. Now, you were questioned about</p>

<p style="text-align: right;">Page 665</p> <p>1 whether the variance request, as you described 2 it -- whether the permit application contained a 3 variance request. I took your -- your answer to 4 be that they requested deviations from the 5 minimum requirements of the rules, and because 6 they requested deviations, the Department 7 construed that to be a request for variance; is 8 that fair? 9 A. Yes. I -- I -- I think that's 10 a -- a -- accurate, yes. 11 HEARING OFFICER: David, do you 12 mind trying to repeat that? I just 13 want to make sure I heard it right. 14 MR. LUDDER: Sure, sure. 15 HEARING OFFICER: It's not a trick, 16 but -- 17 MR. LUDDER: No, I understand. 18 Perhaps we could get the reporter to 19 repeat it? 20 (Whereupon, the requested 21 portion of the record was 22 read back.) 23 HEARING OFFICER: Okay. Thank you.</p>	<p style="text-align: right;">Page 667</p> <p>1 by those rules to be necessary? 2 A. No. I would say that the 3 methodology in which an applicant meets the 4 intent of those rules is within the Department's 5 discretion. So in this case, for instance, the 6 fact that they clearly request an MSW 7 cell -- because this is an MSW landfill -- and a 8 operating C&D disposal area, and very prevalent 9 throughout the application and the drawing, it 10 clearly shows two separate and distinct disposal 11 areas and talks about them differently and has 12 different requirements of those, then it was 13 clear to us, as -- as put in here, clear and 14 complete, they certainly clearly and completely, 15 in our mind, requested a variance from having a 16 single working face. 17 Q. I understand. 18 A. So I -- I wouldn't say that 19 they -- that we're saying they don't have to 20 comply with those. It's the manner in which 21 they comply with those. 22 Q. Well, what about Paragraph (2)(b) 23 of that rule, which asks for, An assessment,</p>
<p style="text-align: right;">Page 666</p> <p>1 And I heard the answer. 2 BY MR. LUDDER: 3 Q. All right. Do you recall, in the 4 application, the applicant actually making a 5 request for a, quote, variance? 6 A. I don't recall there being those 7 specific words of, in essence, We hereby request 8 a variance. 9 Q. All right. 10 A. But, again, it would certainly, 11 from -- from our perspective in looking at the 12 application and the drawings, both the 13 three-to-one slope and the two working faces 14 was, as I -- I think I used the word 15 earlier -- inherent throughout the application. 16 Q. All right. In Rule 335-13-8-.01, 17 it says that a -- that a variance -- the 18 Department may grant a variance based upon the 19 procedures of 335-13-8-.02 through 335-13-8-.05. 20 And I take it from your testimony that, 21 basically, you have decided that none of those 22 rules have to be satisfied by the applicant, 23 because you don't deem the information required</p>	<p style="text-align: right;">Page 668</p> <p>1 with supporting factual information, of the 2 impact that the variance will impose on the 3 public health and the environment in the 4 affected area? 5 A. In the case of that one, I would 6 refer back up to Part (2) above that says, in 7 part, Where determined applicable by the 8 Department. 9 As I testified earlier, the two variances 10 that were requested by Dothan, three-to-one 11 slope for final and two working faces, are 12 fairly common. And because of -- these were not 13 unusual, they're not out of the realm of reason 14 for what we've granted for similar facilities in 15 the past, that assessment of public health and 16 the environment, we've -- we've seen 17 demonstrated at other facilities that these 18 variances can be implemented without those 19 impacts. I think there was testimony 20 yesterday -- I think it was Mr. Story that 21 talked about the use of -- I believe you asked 22 him about tire chips. If an applicant requested 23 to use tire chips as part of a variance as</p>

<p style="text-align: right;">Page 669</p> <p>1 alternative cover, one of the things that cover 2 is supposed to do is to serve as a fire break. 3 And so we have in the past -- in the past where 4 there have been combustible materials requested 5 to be used as alternate cover, we've required 6 the applicant to do further study and 7 demonstrate to us the flammability or the 8 combustibility of those materials and perhaps 9 even to change it to "add soil" to make it less 10 combustible so it would serve as that fire 11 break. So that would be the kind of thing that 12 we would deem applicable that they would have to 13 do that assessment that's referenced under Rule 14 (2)(b). 15 Q. So your definition of "where 16 determined applicable" is, essentially, whether 17 or not you think you need information? 18 A. Yes. It is -- it is, What does 19 the Department need to implement these rules? 20 And that's an authority granted to us by the 21 statute. 22 Q. Would you agree that 335-13-8, 23 Procedures for Variances, is applicable to the</p>	<p style="text-align: right;">Page 671</p> <p>1 it's up to the Department to determine what, if 2 any, assessment is to be required in order to 3 process a variance request. So in this -- the 4 absence of a specific is a sufficient 5 assessment, in this case, because of the types 6 of variances requested. 7 Q. All right. Are you saying that a 8 specific assessment was absent from the 9 application? 10 A. I'm saying a specific assessment 11 of the impact to public health and the 12 environment for two working faces was not 13 determined to be applicable in this case, so 14 within the narrow scope of your question, no 15 assessment was an assessment. 16 Q. Oh, okay. 17 A. Because our assessment is based on 18 our experience at other facilities with the same 19 variance -- 20 Q. I'm talking just about what the 21 City provided to the Department, not -- not -- 22 A. The City complied with this 23 rule --</p>
<p style="text-align: right;">Page 670</p> <p>1 variance requests that the City of Dothan 2 requested? 3 A. Yes. 4 Q. Did the City provide to the 5 Department an assessment with supporting factual 6 information of the impact that the 7 variance -- or that both variances would impose 8 on the public health and the environment? 9 A. Due to the nature of the variances 10 that were requested by Dothan, no such 11 assessment was -- 12 Q. That's -- that's not my 13 question -- 14 A. -- deemed -- determined 15 applicable. 16 Q. That's not my question. 17 A. That's my answer. 18 Q. Did they provide an assessment? 19 A. In accordance with the rule -- 20 Q. No, I didn't -- I'm not asking 21 what you think the rule requires. I'm asking: 22 Did the application provide such an assessment? 23 A. Then I would say, yes, because</p>	<p style="text-align: right;">Page 672</p> <p>1 Q. And I didn't -- 2 A. -- by their application. 3 Q. -- I didn't ask whether they 4 complied with the rule. 5 A. Okay. 6 Q. I simply asked: Is there an 7 assessment in the application? 8 A. And I simply answered that our 9 determination was that no specific assessment 10 was required, based on our knowledge of the 11 impacts of these variances. 12 Q. So is that an explanation for why 13 the assessment is not in the application? 14 A. It's an explanation for why no 15 assessment was necessary. 16 Q. Is it an explanation for why there 17 is no assessment in the permit application? 18 A. I'm -- again, I would say the 19 absence of an assessment, in our minds, was 20 sufficient assessment. If they had asked for 21 something different, they would have potentially 22 been required to supply something different. 23 Q. All right. Would you look at</p>

<p style="text-align: right;">Page 673</p> <p>1 Paragraph (d) of 335-13-8-.02 paren 2, where it 2 says, A concise factual statement of the reasons 3 the petitioner believes that non-compliance with 4 the particular provisions of -- of Division 13 5 will not threaten the public health or 6 unreasonably create environmental pollution. 7 Was that statement included in the permit 8 application? 9 A. Not specifically, no. For the 10 same reason as -- as (b). 11 Q. Okay. Now, that statement 12 requires the -- the person seeking the variance 13 to explain what -- what that person 14 believes -- let me withdraw that. 15 That statement indicates that the 16 Petitioner has to show -- what the -- how the 17 Petitioner believes that noncompliance 18 with Division 13 will not threaten the public 19 health or unreasonably create environmental 20 pollution, correct? 21 A. Where determined applicable by the 22 Department, yes. 23 Q. Okay. So your decision was that</p>	<p style="text-align: right;">Page 675</p> <p>1 Q. But you don't know what the City 2 of Dothan thinks about that, do you? 3 A. I don't, because we determined it 4 to not be applicable for them to address that. 5 Q. They didn't have to explain it? 6 A. No, per the rules. 7 Q. Okay. Now, you testified, I 8 believe, that there were several sections in 9 Exhibit J-1 that you contend represent a finding 10 that the variances -- or that noncompliance with 11 the rules will not threaten the public health or 12 unreasonably create environmental pollution, 13 correct? 14 A. With respect to the -- the rules 15 that are subject to the variance. Is that -- is 16 that the focus of your question? 17 Q. Yes. 18 A. Yes. Chief of those is: I issued 19 the permit. 20 Q. Right. So essentially, you're 21 saying that the finding that the variances will 22 not threaten the public health or unreasonably 23 create environmental pollution is implied by the</p>
<p style="text-align: right;">Page 674</p> <p>1 this requirement was not applicable to the City 2 of Dothan's variance request? 3 A. It was not necessary due to the 4 nature of the variances requested, yes. 5 Q. So you don't know what the 6 Petitioner -- or how the Petitioner believes 7 that noncompliance with these -- with the 8 provisions of Division 13 will not threaten 9 public health or unreasonably create 10 environmental pollution? 11 A. I know that the Department did not 12 feel that such a statement was necessary based 13 on the fact that we have issued these same types 14 of variances for other facilities and not seen 15 threats to public health or unreasonable 16 environmental pollution based on their 17 implementation. 18 Q. So it's the Department's belief 19 that the variances granted will not threaten the 20 public health or environment -- or unreasonably 21 create environmental pollution? 22 A. I wouldn't have issued them if I 23 thought otherwise.</p>	<p style="text-align: right;">Page 676</p> <p>1 issuance of the permit, correct? 2 A. Absolutely. If -- if -- if we did 3 not -- if we felt that there was an unreasonable 4 threat, whatever the wording is, we wouldn't 5 issue the variance, or in this case, issue the 6 modification including the variances. 7 Q. But there is not an expressed 8 written finding to that effect, is there? 9 A. Nor is there a requirement for 10 such. 11 Q. Okay. I take it your answer is, 12 Yes, there is not an express finding to that 13 effect? 14 A. There is not an express finding 15 with those words. However, there is certainly 16 an expression of our belief in that we issued 17 the permit. 18 Q. I understand. 19 A. Nor is there a requirement in 20 Chapter 8 for such an express finding by the 21 Department. 22 Q. Have you read through Exhibit J-3, 23 Part II, which was the static stability</p>

<p style="text-align: right;">Page 677</p> <p>1 analysis?</p> <p>2 A. No. Read through it? No.</p> <p>3 Flipped through it? Yes.</p> <p>4 Q. Okay. Did you -- when you flipped</p> <p>5 through it, did you notice any soil loss</p> <p>6 calculations?</p> <p>7 A. Soil loss, no. Slope stability,</p> <p>8 yes.</p> <p>9 Q. Okay. So soil loss has to do with</p> <p>10 erosion, doesn't it?</p> <p>11 A. It does, if I remember my civil</p> <p>12 engineering from a long time ago.</p> <p>13 Q. And the higher the slope of a</p> <p>14 landfill cover, the more -- the -- the higher</p> <p>15 the potential for erosion, correct?</p> <p>16 A. Well, I think normally, yes.</p> <p>17 However, as shown -- as testified to yesterday</p> <p>18 and as shown in this analysis, the -- the</p> <p>19 terracing system will help mitigate some of that</p> <p>20 as opposed to just a -- a long run of three to</p> <p>21 one versus a long run of four to one.</p> <p>22 Q. Uh-huh? Okay.</p> <p>23 A. The other thing to -- to note on</p>	<p style="text-align: right;">Page 679</p> <p>1 is -- specifically mentions erosion?</p> <p>2 A. It does specifically mention</p> <p>3 erosion, but it's also -- there are a number of</p> <p>4 other factors.</p> <p>5 Q. All right. You heard testimony</p> <p>6 yesterday, I believe, that the three-to-one</p> <p>7 final slope that was approved by the permit</p> <p>8 applies to both the C&D landfill and the</p> <p>9 municipal solid waste landfill, correct?</p> <p>10 A. No, I did not.</p> <p>11 Q. Okay. Did you hear testimony</p> <p>12 yesterday that the -- I withdraw the question.</p> <p>13 Did you hear testimony yesterday</p> <p>14 that -- that there was a variance granted for</p> <p>15 both the construction and demolition landfill</p> <p>16 and the -- and the municipal solid waste</p> <p>17 landfill, but the applicant did not request such</p> <p>18 a variance for one of those?</p> <p>19 A. I recall, without making this</p> <p>20 young man go back and read the testimony, I</p> <p>21 recall one of the witnesses saying something</p> <p>22 about a poorly worded condition, which I believe</p> <p>23 I said earlier I would disagree with. I don't</p>
<p style="text-align: right;">Page 678</p> <p>1 that is this particular variance is for the</p> <p>2 final cover system. The final cover system also</p> <p>3 includes a -- a liner system on top of the</p> <p>4 waste, followed by a soil layer -- or a sand</p> <p>5 layer, followed by a soil layer and vegetative</p> <p>6 cover. So there's -- it's a multi-layer cover</p> <p>7 system that will go into that final cover. So</p> <p>8 erosion is helped -- "soil loss," if you will,</p> <p>9 to use your term, is helped by any or all of</p> <p>10 those.</p> <p>11 Q. But you don't recall seeing any</p> <p>12 soil loss calculations?</p> <p>13 A. I don't. I did -- I did not look</p> <p>14 at it in that depth of detail, no. And, again,</p> <p>15 I don't -- I don't believe that was the -- the</p> <p>16 purpose of it anyway.</p> <p>17 Q. The purpose of what?</p> <p>18 A. For erosion. It was for the</p> <p>19 stability, the slope stability.</p> <p>20 Q. Oh, the analysis was for</p> <p>21 stability?</p> <p>22 A. That's right, that's right.</p> <p>23 Q. But your rule on slopes</p>	<p style="text-align: right;">Page 680</p> <p>1 recall if any of the witnesses said that the</p> <p>2 variance was applicable to both. I do recall</p> <p>3 that the wording of the variance refers to the</p> <p>4 drawings submitted with the application, and I</p> <p>5 believe it's clear from the drawings that the</p> <p>6 applicant was going to -- plans to construct a</p> <p>7 final cover system of three to one, with the</p> <p>8 terraces, so effectively, three and a half or so</p> <p>9 to one on the MSW disposal area, and I think the</p> <p>10 C&D was going to remain a four to one, if I</p> <p>11 remember the drawings.</p> <p>12 Q. Right. And if you would, look at</p> <p>13 Exhibit J-1, Page 13 of 14. Paragraph A, Final</p> <p>14 Cover. It says, The Permittee shall construct a</p> <p>15 final cover system of [verbatim] three to one</p> <p>16 final slopes as shown on the final closure</p> <p>17 drawing dated January 15.</p> <p>18 A. Yes.</p> <p>19 Q. Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. So is it your contention that the</p> <p>22 three-to-one final slope that's mentioned there</p> <p>23 refers to only the MSW landfill?</p>

<p style="text-align: right;">Page 681</p> <p>1 A. It refers to what is -- as shown 2 in the final closure drawings, which again, I 3 think we have testimony that the application, 4 including the drawings, is part of the ap -- is 5 part of the permit. And I believe we also have 6 testimony -- and I'll be glad to look at 7 P-5 -- to show that in those drawings, it shows 8 final cover of four to one on the C&D and three 9 to one with terraces on the MSW. I -- that's my 10 recollection of what was in the testimony. 11 Q. Okay. 12 A. I think what the witness -- and 13 again, I don't recall if it was Mr. Story or 14 Mr. Kelly -- was calling "poorly worded" is the 15 fact that just above that, the rule that is 16 referenced, 335-13-4-.20 paren 2, paren c, 2, is 17 not specific in the rules to either MSW or C&D. 18 And I think that's where he was going. But in 19 my mind -- and I think that -- I believe it was 20 Mr. Story later testified -- well, no, that 21 was -- strike that. Do I get to do that? Do I 22 get to say "strike that"? 23 But -- but I think the fact that the permit</p>	<p style="text-align: right;">Page 683</p> <p>1 what's in your mind. I'm talking about the 2 language in the permit. 3 A. Okay. Then, yes, it does 4 specifically say. 5 Q. Okay. Explain. 6 A. Thank you. The reason that 7 it's -- the explanation for that is this 8 particular rule, 13-4-.23 paren 1, paren c, is a 9 specific rule to the requirements for inert or 10 construction and demolition -- C&D landfills. 11 And that rule, (1)(c), states, All waste shall 12 be confined to as small an area as possible and 13 placed onto an appropriate slope not to exceed 14 four to one or as approved by the Department. 15 So the fact that this is an MSW landfill 16 permit, as I said earlier, a -- an MSW working 17 face is part and parcel of this permit. That's 18 what this permit is granted for. A variance to 19 allow for a C&D landfill and a C&D working face 20 on the same site was necessary. And the reason 21 the variance refers to that "as small an area as 22 possible" is so that one can't make the 23 argument, Well, as small an area as possible</p>
<p style="text-align: right;">Page 682</p> <p>1 wording includes the reference to the drawing 2 makes that more specific. 3 Q. I understand. Referring to 4 Paragraph 2 under the -- under -- under the 5 variance provision. 6 A. Yes, sir. 7 Q. Page 14 of 14. It says, The 8 Permittee has been approved to operate two 9 working faces. 10 A. Yes. 11 Q. And the rule that's referenced in 12 the previous sentence is a rule that applies 13 only to construction and demolition landfills, 14 correct? 15 A. That's correct. That's 16 335-13-4-.23 paren 1, paren c. 17 Q. Now, the variances -- the variance 18 authorizes two -- two working faces, but it 19 doesn't specify where those faces can be, does 20 it? 21 A. Well, in my mind, yes, it does, 22 because of the rule that's -- 23 Q. Excuse me. I didn't ask</p>	<p style="text-align: right;">Page 684</p> <p>1 means you ought to only be at one working face. 2 So we have to grant a variance referring to 3 the C&D to allow them to operate a C&D work face 4 in that disposal area under this MSW permit. 5 Q. Well, let me ask you this: Does 6 "confined to as small an area as possible," is 7 that the equivalent of a working face? 8 A. The Department's practice over the 9 years in the more than 20 or 30 years -- I guess 10 30 years -- that we've had at Solid Waste here 11 has been to equate "as small an area as 12 possible" with a single working face within a 13 disposal area or within a facility. So while 14 you'll never see the term "working face" or a 15 restriction on the number of working faces in 16 the solid waste rules, our interpretation of "as 17 small an area as possible" is, unless you are 18 authorized otherwise through a variance, you 19 have to maintain a single working face, and that 20 single working face has to be as small as 21 possible under the restrictions that I mentioned 22 earlier about compaction, cover, and so forth. 23 So in order to have more than a single</p>

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<p>1 working face, you have to be granted a variance 2 from the rule that requires as small an area as 3 practical [verbatim]. 4 Q. Wouldn't a C&D landfill, a 5 permitted C&D landfill, automatically be subject 6 to the rule requiring that -- that the waste be 7 confined to as small an area as possible without 8 a variance? 9 A. Yes. If -- if this were a 10 permitted C&D landfill only, then absolutely. 11 But as I said earlier, this is a municipal solid 12 waste landfill, and so the C&D was -- the C&D 13 disposal area is within that larger MSW umbrella 14 and required this variance to allow the -- the 15 potential for the simultaneous -- simultaneous 16 operation of both disposal areas. If you look 17 at J-1 on the cover page of the permit, Permit 18 Type, middle of the page says, Municipal Solid 19 Waste. 20 Q. And doesn't J-1 also -- the cover 21 page of the permit -- also say that the -- that 22 disposal operations are authorized for the C&D 23 disposal?</p>	<p>1 proof necessary in this case was there needed to 2 be no specific proof because of the types of 3 variances that they were requesting. Again, had 4 they requested some oddball variance that we'd 5 never seen before, then there would have been a 6 higher, more rigorous level of burden placed on 7 the applicant to justify that request before we 8 would have granted it. 9 Q. So as I read this rule -- you tell 10 me if you differ -- the finding by the 11 Department that noncompliance will not threaten 12 the public health or unreasonably create 13 environmental pollution follows presentation of 14 adequate proof? 15 A. Yes. Until the Department issues 16 the variance, either as a stand-alone action or, 17 in this case, through a permit modification, 18 until it's granted, until that finding is 19 finalized, that's -- that is, in essence, our 20 finding. 21 Q. I understand, but the presentation 22 of adequate proof precedes the finding, correct? 23 A. It does. And -- and in this case,</p>
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<p>1 A. Yes. You can put C&D waste in an 2 MSW landfill. 3 Q. I understand. 4 A. Yes. 5 Q. I'm going to jump back to Rule 6 335-13-8-.01, and you see in that paragraph 7 where it says, Upon presentation of adequate 8 proof? 9 A. I do. 10 Q. What adequate proof did the City 11 of Dothan present to the Department? 12 A. Well, the entire sentence, for 13 context, says, The Department may grant 14 individual variances from the specific 15 provisions of Division 13 based upon the 16 procedures of -8-.02 through -8-.05 -- forgive 17 my shorthand -- whenever it is found by the 18 Department, upon presentation of adequate proof, 19 that non-compliance with Division 13 will not 20 threaten the public health or unreasonably 21 create environmental pollution. 22 Again, this gets back to the fact that it 23 was found by the Department that the adequate</p>	<p>1 again -- you've got to remember, that in this 2 case, this request for variance or requests for 3 these two variances was part of a larger permit 4 major modification which went through a public 5 notice process. So by starting that public 6 notice process, the Department, in essence, 7 makes the determination that the application is 8 complete, that is, that we have everything that 9 we need to present to the public a -- a proposed 10 action. And we released it for a 35-day comment 11 period, we received comments, we responded to 12 those comments, then we issued the permit. So I 13 guess in -- in this particular case, when it's 14 done through -- when a variance is granted 15 through a modification, or if it's granted 16 through a renewal, you could also argue that, by 17 proposing the action, the Department's at least 18 made a preliminary determination on the granting 19 of those, but until we make that final decision, 20 that finding is not made. 21 Q. Okay. My question was simply 22 this: Did the Department determine that 23 presentation of any kind of proof for these</p>

<p style="text-align: right;">Page 689</p> <p>1 variances was not required?</p> <p>2 A. That additional specific proof was</p> <p>3 not required, yes.</p> <p>4 Q. Okay.</p> <p>5 A. Again, given the nature of the</p> <p>6 variances requested.</p> <p>7 Q. Okay. Now, are you aware of any</p> <p>8 guidance, any written guidance, written</p> <p>9 policies, or written interpretations regarding</p> <p>10 the implementation of the siting standards?</p> <p>11 A. No.</p> <p>12 Q. Are you aware of any previous</p> <p>13 Environmental Management Commission decisions</p> <p>14 that interpret the siting standards?</p> <p>15 A. That's a broad question. Could</p> <p>16 you be more specific? I mean, certainly the</p> <p>17 Commission, in the past, has heard appeals of</p> <p>18 solid waste permit actions that were based, in</p> <p>19 part, on some of these particular siting</p> <p>20 standards.</p> <p>21 Q. Okay. Well, let's talk about</p> <p>22 the -- let's just limit that to wetlands and</p> <p>23 the -- the location of landfills in wetlands and</p>	<p style="text-align: right;">Page 691</p> <p>1 wetlands or -- or the endangered species, or</p> <p>2 historical, any of those other issues, in the</p> <p>3 same manner for many, many years.</p> <p>4 MR. LUDDER: Move to strike</p> <p>5 the Witness's answer. It was not</p> <p>6 responsive to the question.</p> <p>7 HEARING OFFICER: Next question.</p> <p>8 BY MR. LUDDER:</p> <p>9 Q. Do you know if the permit as</p> <p>10 you -- excuse me -- if ADEM has issued a permit</p> <p>11 for the discharge of fill material into</p> <p>12 wetlands?</p> <p>13 A. Has ADEM issued a permit for the</p> <p>14 discharge of fill material into wetlands?</p> <p>15 Q. Into wetlands on the Dothan</p> <p>16 landfill's facility site?</p> <p>17 A. To my knowledge, we have not, no.</p> <p>18 We, the Department.</p> <p>19 Q. Right. And do you know if ADEM</p> <p>20 has issued a permit for discharge of fill</p> <p>21 material into streams at the Dothan landfill</p> <p>22 site?</p> <p>23 A. I don't believe we have, no.</p>
<p style="text-align: right;">Page 690</p> <p>1 the discharge of pollutants to waters of the</p> <p>2 State. Do you recall any Commission</p> <p>3 interpretations regarding those provisions?</p> <p>4 A. I recall -- again, it was before</p> <p>5 my time in solid waste, but I know that a</p> <p>6 landfill permit that was issued in, I think it</p> <p>7 was 2003, had the issue of wetlands, and I</p> <p>8 believe that was subject to an administrative</p> <p>9 appeal. Again, I wasn't party to that, but I</p> <p>10 believe that's the case, and I think the</p> <p>11 Commission upheld the Department's -- I know the</p> <p>12 Commission upheld the Department's action,</p> <p>13 because it's a valid permit.</p> <p>14 Q. Okay. Do you know if the same</p> <p>15 interpretation issues were involved in that case</p> <p>16 as in this case?</p> <p>17 A. From the -- the Department's</p> <p>18 perspective, it was processed in the same</p> <p>19 manner. I -- as far as the -- the individual,</p> <p>20 you know, what -- what the petitioner said then</p> <p>21 versus what your clients have said, I don't know</p> <p>22 those specifics, no. But I know that we've been</p> <p>23 processing permit applications with regards to</p>	<p style="text-align: right;">Page 692</p> <p>1 Q. Have you had an opportunity to</p> <p>2 look at any of the drawings for the Dothan</p> <p>3 facility?</p> <p>4 A. Again, just in a cursory fashion.</p> <p>5 Q. All right. There was some</p> <p>6 testimony over the last few days that -- would</p> <p>7 you agree that the testimony indicates that the</p> <p>8 disposal cells in the landfill expansion area</p> <p>9 amount to about 20.6 acres?</p> <p>10 A. I believe that was one of the</p> <p>11 numbers, yes.</p> <p>12 Q. All right. Now, the footprint of</p> <p>13 the expansion area -- I think it's shown on the</p> <p>14 drawing -- is that 40 acres? Do you know?</p> <p>15 A. I think the overall footprint of</p> <p>16 the landfill, if I remember, is over 500 acres.</p> <p>17 Q. The footprint of the expansion</p> <p>18 area. Do you recall?</p> <p>19 A. I -- I don't recall, no.</p> <p>20 Q. Okay, okay.</p> <p>21 A. I think the disposal area, again,</p> <p>22 is the number that you cited, the 20-some odd</p> <p>23 acres.</p>

<p style="text-align: right;">Page 693</p> <p>1 Q. Uh-huh. Has the Department ever 2 denied a variance? 3 A. A formal denial -- not that I 4 recall. We have informed applicants that we 5 cannot issue the variance that they have 6 requested unless they modify it, and then it's 7 up to them to either modify the variance request 8 or to withdraw it. 9 Q. Okay. Are you aware of any cases 10 where an applicant has submitted a variance 11 request that addresses all the issues that are 12 described in 335-13-8-.02? And I'm talking, 13 specifically, addresses. 14 A. Well, again, I -- I think 15 answering your question is -- is difficult, 16 because that specific rule allows the Department 17 to determine which of those items, if any, are 18 applicable for each individual request. So on 19 the one hand, I would say, yes, all of them have 20 that information. 21 Q. Okay. 22 A. In accordance with the rule that 23 you cited.</p>	<p style="text-align: right;">Page 695</p> <p>1 provisions of Division 13 will not threaten the 2 public health or unreasonably create 3 environmental pollution? 4 A. Yes. 5 Q. And in those cases, did the 6 Department request that information from the 7 applicant? 8 A. In one case -- in one particular 9 assessment that I think I mentioned earlier, we 10 requested that the applicant do an assessment of 11 different mixes between what they proposed as 12 alternate cover material and soil, look at it in 13 different ratios and give us information on the 14 flammability of those mixes, so, yes. 15 Q. But in this case, you -- you 16 deemed it unnecessary to request that 17 information? 18 A. Specifically to request it, yes. 19 Q. Does the Department do anything to 20 verify the list of adjoining property owners in 21 the application? 22 A. We do not. 23 MR. LUDDER: That's all I have,</p>
<p style="text-align: right;">Page 694</p> <p>1 Q. Do you recall ever seeing an 2 applicant submit a document that is labeled, 3 "Petition for Variance"? 4 A. I'm sure there has been, because 5 again, most variances, or a number of 6 variances -- I don't know that I would say 7 most -- but a number of variances are 8 stand-alone requests, so those would be 9 submitted in letter form. Now, whether they 10 have those words, "Petition for variance," or, 11 "Request for variance," or, "Variance request," 12 might change. But in essence, it would be the, 13 Petition for variance. 14 Q. Have you seen a request for 15 variance in any case that included an assessment 16 with supporting factual information of the 17 impact that the variance will impose on public 18 health and the environment? 19 A. I have, yes. 20 Q. Okay. And have you seen any 21 variance request that includes a concise factual 22 statement of the reasons the petitioner believes 23 that noncompliance with the particular</p>	<p style="text-align: right;">Page 696</p> <p>1 your Honor. 2 HEARING OFFICER: Redirect. 3 REDIRECT EXAMINATION 4 BY MR. CARTER: 5 Q. I would -- just one thing, 6 briefly. Mr. Davis, if you would, please turn 7 to Joint Exhibit Number 12. It might be in 8 another book. 9 HEARING OFFICER: Joint 12? 10 THE WITNESS: Joint 12. That's 11 what I was looking for earlier. 12 BY MR. CARTER: 13 Q. Can you identify that document? 14 A. I can. 15 Q. What is that? 16 A. This is the response to comments 17 and the cover letter to the response to comments 18 that the Land Division prepared and sent out to 19 the commentators and any other parties who 20 requested it when we issued the permit. 21 Q. Okay. And you asked -- you've 22 referred to that a couple of times in your 23 testimony?</p>

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<p>1 A. I have, yes.</p> <p>2 MR. CARTER: Okay. I -- we would</p> <p>3 move to admit Number -- Joint Exhibit</p> <p>4 Number 12.</p> <p>5 MR. LUDDER: No objection.</p> <p>6 HEARING OFFICER: It's admitted.</p> <p>7 (Exhibit No. J-12 was admitted</p> <p>8 into evidence.)</p> <p>9 HEARING OFFICER: Any further?</p> <p>10 MR. CARTER: I'm not --</p> <p>11 HEARING OFFICER: I didn't mean to</p> <p>12 interrupt you.</p> <p>13 Mr. White?</p> <p>14 MR. WHITE: No questions.</p> <p>15 HEARING OFFICER: Redirect? Have</p> <p>16 we already done that?</p> <p>17 MR. LUDDER: No.</p> <p>18 HEARING OFFICER: Okay. I have</p> <p>19 some questions.</p> <p>20 THE WITNESS: Okay.</p> <p>21 HEARING OFFICER: I've just got to</p> <p>22 go back through my notes and sort of</p> <p>23 look. It might be a little haphazard</p>	<p>1 point, then the land -- that area of</p> <p>2 the landfill is full, and they're</p> <p>3 moving onto something else. So that's</p> <p>4 that final cap, that final cover.</p> <p>5 HEARING OFFICER: And that will</p> <p>6 have to be at the four-to-one grade?</p> <p>7 THE WITNESS: That -- for the MSW,</p> <p>8 that's what's going to be at the three</p> <p>9 to one.</p> <p>10 HEARING OFFICER: Three to one?</p> <p>11 THE WITNESS: With the terraces.</p> <p>12 So, you know, it's -- it's going to go</p> <p>13 up at three to one, then it will level</p> <p>14 off, and then go up three to one,</p> <p>15 level off. So if you -- going back to</p> <p>16 geometry, if you took it on an</p> <p>17 average, it'd probably be about a</p> <p>18 three-and-a-half to one.</p> <p>19 HEARING OFFICER: I sort of</p> <p>20 understand that. But on a daily</p> <p>21 basis, it's going to be on a</p> <p>22 four-to-one grade?</p> <p>23 THE WITNESS: Right. They</p>
Page 698	Page 700
<p>1 here. On this three-to-one grading</p> <p>2 and four-to-one grading, I understand</p> <p>3 about the terracing and the</p> <p>4 three-to-one grading. How does that</p> <p>5 work on the final? And first</p> <p>6 question is: When is "final"? Is</p> <p>7 that at the -- when they close</p> <p>8 the -- the site?</p> <p>9 THE WITNESS: Yes, it is.</p> <p>10 When -- when the -- when the site</p> <p>11 reaches -- it's -- it's usually based</p> <p>12 on final elevation. You know, there's</p> <p>13 a certain capacity of air space within</p> <p>14 a cell. And they build it up, they</p> <p>15 reach that final elevation, which, all</p> <p>16 of those elevations are shown on those</p> <p>17 drawings. When they get to that</p> <p>18 point, they leave enough room to put</p> <p>19 their final cap on, which is what I</p> <p>20 mentioned earlier about the soil</p> <p>21 layer, the synthetic liner layer, the</p> <p>22 final cover, the grass layer, those</p> <p>23 kind of things. When they get to that</p>	<p>1 will -- as they compact, as they put</p> <p>2 the lifts in -- which is what you call</p> <p>3 the waste layers -- they'll put the</p> <p>4 lifts in, they'll compact that down,</p> <p>5 they'll do their daily cover. They'll</p> <p>6 build that up -- as I understand,</p> <p>7 again, in their operational</p> <p>8 plan -- they'll build that up on a</p> <p>9 four-to-one basis, and then they'll</p> <p>10 come back later and -- and build that</p> <p>11 three-to-one slope with the</p> <p>12 terrace -- three-to-one slope with the</p> <p>13 terrace. And that provides, you know,</p> <p>14 that -- as I think Mr. Wells called</p> <p>15 it -- that buttressing effect. It's</p> <p>16 kind of that structural stability on</p> <p>17 that as well.</p> <p>18 HEARING OFFICER: Okay. There</p> <p>19 were -- there was a lot of testimony</p> <p>20 about the neighbors to the landfill</p> <p>21 who complained about the odors and the</p> <p>22 problems with vermin and all that kind</p> <p>23 of thing. As far as I can tell from</p>

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<p>1 your testimony about the odor, we're 2 really talking about some kind of 3 reasonableness test, aren't we? 4 THE WITNESS: We are, we are. 5 I -- you know, I live about three 6 miles as the crow flies from a paper 7 mill. Some days I smell it, some days 8 I don't, you know. And so a landfill 9 has an odor associated with it. 10 It's -- it's the nature of the 11 landfill. What the Federal standards 12 from the 1990s and our state rules 13 that were -- were promulgated after 14 that try to do is develop operational 15 standards to try to, as much as 16 possible, minimize and mitigate those 17 effects. 18 HEARING OFFICER: And you have 19 experts, you have investigators, 20 whatever they are called, that go out 21 and monitor the smell from time to 22 time? 23 THE WITNESS: They -- right. As</p>	<p>1 THE WITNESS: That's correct. 2 HEARING OFFICER: And if the City 3 of Dothan does, at some point, want to 4 use that alternative cover, they'll go 5 through that process with you, 6 basically requesting it from you, and 7 Mr. Lewis and Mr. Del Vecchio will 8 have to monitor the website before 9 they're going to know about that; is 10 that correct? 11 THE WITNESS: Yes, sir. It -- it 12 is -- it is not an action that 13 requires any type of notice 14 under -- under our rules or the 15 federal rules, for that matter. 16 HEARING OFFICER: And I -- that's 17 what I was trying to get to. Is it 18 fair to say -- I'm not an engineer, 19 I'm just trying to get this in 20 layman's terms -- is it fair to say 21 that that particular item would not be 22 a big enough or important enough item 23 to go to public hearing?</p>
Page 702	Page 704
<p>1 part of their normal routine 2 inspections of landfills like this, 3 MSW landfills, one of the things they 4 do is, I guess, look for, if you 5 will -- smell for unusual or 6 unreasonable odors. And that's 7 usually -- if they find them, it would 8 be related to either some specific 9 waste stream that's particularly bad 10 or perhaps some operational issues 11 that the landfill's having: Cover, 12 those kind of things, might be 13 improper compaction. That would be a 14 compliance issue that would need to be 15 addressed. 16 HEARING OFFICER: All right. On 17 these questions that Mr. Ludder asked 18 you about on the alternative cover -- 19 THE WITNESS: Yes, sir. 20 HEARING OFFICER: -- there's no 21 request for it in this permit and no 22 authorization for it yet by the -- by 23 the Department?</p>	<p>1 THE WITNESS: Well, I guess I'd 2 characterize it this way: That the 3 rules are very specific in -- and they 4 even, on modifications, break it out 5 major and minor. Major modifications 6 require a public notice process, minor 7 do not. And then there are other 8 revisions such as name changes -- the 9 case you and I were talking about 10 earlier for instance -- name changes, 11 permit transfers, those require no 12 public notice process, and the 13 variance, which is a separate chapter 14 of the rules, has no reference to any 15 kind of notice procedures. 16 HEARING OFFICER: So that one in 17 particular that -- that we're speaking 18 about would be a minor one? 19 THE WITNESS: It would be -- again, 20 it's -- it's not, under that term of 21 art, a modification, but it would 22 be -- I guess I'd characterize it, to 23 use the same wording, a minor action</p>

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<p>1 that, over the years, the rules have 2 never -- the Commission who adopts the 3 rules has never seen fit to require 4 the same type of public scrutiny that 5 they do for an initial issuance, a 6 reissuance, or a major modification. 7 HEARING OFFICER: Do you agree with 8 the rule? 9 THE WITNESS: I do. 10 HEARING OFFICER: I guess we'd say 11 Mr. Lewis and Mr. Del Vecchio probably 12 disagree with the rule. 13 THE WITNESS: Which is their 14 prerogative. 15 HEARING OFFICER: Sure. 16 THE WITNESS: And I would say that 17 those rules have been in place for 18 many, many years, and we've processed 19 many, many variances. To my 20 recollection, in my ten-plus years of 21 being over Solid Waste, this is the 22 first challenge I recall on a 23 variance.</p>	<p>1 down and, say, the six-inch cover over 2 that? 3 THE WITNESS: That's right. 4 HEARING OFFICER: Is that what 5 we're talking about? 6 THE WITNESS: It is, it is. 7 HEARING OFFICER: It seemed like an 8 odd way to interpret as small an area 9 as possible to me. I haven't been 10 working in the area, I'm not an 11 engineer, I think -- and I know how 12 activities go when you're working on 13 things day to day -- but it does seem 14 like an odd way to interpret "as small 15 an area as possible." If I understand 16 you correctly, the City of Dothan, if 17 they had enough manpower and equipment 18 and had enough waste coming in, they 19 could operate the whole 20.6 acres at 20 one time if they could get it covered 21 and compacted on a daily basis? 22 THE WITNESS: Well, the 20.6 acres 23 that you refer to, I guess to -- to</p>
Page 706	Page 708
<p>1 HEARING OFFICER: As the Chief of 2 the Department, if you wanted to put 3 it to public notice, could you? Even 4 though the rules don't require? 5 THE WITNESS: I suppose I could. 6 I'd -- I'd probably have to talk to my 7 lawyers to see if I have that 8 authority, but I -- I believe that we 9 have the discretion to enhance our 10 notice procedures if we wish to do so 11 for -- for any revision. 12 HEARING OFFICER: Help me with 13 this -- this -- I don't want to call 14 it a "definition," but this 15 interpretation of "as small an area as 16 possible." I've heard the other 17 engineers testify yesterday or the day 18 before about how the Department 19 interprets that. And as I understand 20 it, it's mainly what they can handle 21 on a daily basis, what they can get 22 compacted, I don't know if that's 23 bulldozed, however that works, settled</p>	<p>1 correct a couple of things, is 2 multiple cells. And they'll be -- the 3 application shows they'll go in 4 sequence. I think we had testimony 5 that it would go from -- I believe the 6 numbers were Cell 6, to Cell 7, to 7 Cell 8. -- 8 HEARING OFFICER: Okay. 9 THE WITNESS: -- so 10 they -- they'll be in one at a time. 11 HEARING OFFICER: That may have 12 been an exaggeration -- 13 THE WITNESS: Sure. 14 HEARING OFFICER: -- they could use 15 a very big area? 16 THE WITNESS: They could, 17 and -- and there's a number of things 18 that go into that. No two landfills 19 are exactly alike in their resources 20 at their disposal or their equipment, 21 their personnel. Another thing that 22 we have now and have had now for seven 23 or eight years are certified</p>

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<p>1 operators. So depending on the number 2 of operators they have, that is part 3 of that equation too, that goes into 4 what is their capacity to manage the 5 waste on, you know, that daily basis. 6 So -- it -- I agree with you. It 7 would be real nice -- I'm an engineer, 8 and I love numbers. I wish it said X 9 number of feet, but that's going to 10 vary from landfill to landfill and 11 waste type to waste type. So many 12 years ago, before my time in Solid 13 Waste even, this idea of "as small an 14 area as possible" kind of came into 15 being of how to manage and make sure 16 that the landfill can do those daily 17 operations, in the case of an MSW, 18 appropriately. You know, what is 19 their capacity to dispose, compact, 20 and cover on a day-to-day basis? 21 And -- and a lot goes into that, you 22 know. Some landfills like Dothan have 23 a borrow area where they get their</p>	<p>1 that particular example -- and this is 2 theoretical -- the daily activity 3 might be dependent on how much fill 4 dirt they have -- cover dirt they 5 have? 6 THE WITNESS: How much cover dirt 7 they have, how much waste they take 8 in. 9 HEARING OFFICER: Sure. What do 10 they do if they have too much waste 11 coming in, and they don't have enough 12 dirt? Do they stop the waste? 13 THE WITNESS: They either stop the 14 waste, or they get more dirt or get 15 more cover from somewhere, yes. I'm 16 sure there's a lot of dirt pit 17 operators that love those kinds of 18 days. 19 HEARING OFFICER: Yeah, I bet. I 20 bet. And truck drivers. 21 THE WITNESS: That's right. 22 HEARING OFFICER: Okay. Let's talk 23 about this variance issue for a</p>
Page 710	Page 712
<p>1 soil very close by. So I won't say 2 they have an unlimited supply, but 3 they certainly are in better shape 4 than someone that has to rely on 5 bringing in dirt from far off or maybe 6 one of these alternate streams that 7 we've talked about where you're 8 somewhat limited in the amount of 9 cover material you have. You may 10 have -- you may have a smaller work 11 face today than you did the day 12 before, based on the amount of cover 13 dirt that you have available to you 14 for that day's operations. 15 HEARING OFFICER: If you have to 16 bring it from a far-off borrow pit or 17 something like that. 18 THE WITNESS: That's right. You 19 may -- you may not be able to 20 physically cover, because you don't 21 have those resources available to you. 22 HEARING OFFICER: And 23 theoretically, the City of Dothan in</p>	<p>1 second. 2 THE WITNESS: Yes, sir. 3 HEARING OFFICER: I think I 4 understand your testimony, but let me 5 start with the very basic. When we 6 say a "variance," we're talking about 7 a variance from the rules? 8 THE WITNESS: From a specific rule 9 or, in this case, multiple rules. But 10 each variance is for a specific 11 requirement, I'll call it, of the 12 rules. 13 HEARING OFFICER: All right. 14 Now, in relation to variance and in 15 relation to this wetland issue that 16 Mr. Ludder has asked you a lot of 17 questions about, I -- I do want to 18 understand that. 19 THE WITNESS: Uh-huh. 20 HEARING OFFICER: A part of this 21 expansion area was designated 22 wetlands, or is designated wetlands, 23 at the present time?</p>

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<p>1 THE WITNESS: That's right. A part 2 of the area where the expansion will 3 be -- again, it's not there 4 yet -- will be -- is currently a 5 wetlands. 6 HEARING OFFICER: And has anybody 7 testified, or have you testified that 8 that problem has got to be solved by 9 the Corps of Engineers before this 10 facility will come into existence? 11 THE WITNESS: That's correct. 12 HEARING OFFICER: Okay. 13 THE WITNESS: The -- the Corps 14 issued a permit -- 15 HEARING OFFICER: Right. 16 THE WITNESS: -- I'm -- I'm -- I'm 17 not with the Corps of Engineers, but 18 my experience has been -- the way this 19 works is the Corps issues a permit 20 that authorizes an applicant, in this 21 case, the City, to do a certain 22 project. In this case, it was to fill 23 a wetlands for the purpose of</p>	<p>1 when a landfill unit can be there. 2 While it's a wetland, they can't put 3 solid waste in it to constitute a 4 landfill unit. 5 HEARING OFFICER: And you're saying 6 they won't? 7 THE WITNESS: That's correct. 8 HEARING OFFICER: Okay. The State 9 of Alabama and the Department rely on 10 the Corps of Engineers as far as all 11 wetland questions are concerned? 12 THE WITNESS: With the exception 13 of that Water Quality Certification 14 that a couple of folks testified about 15 yesterday. My understanding is that 16 the Department has a memorandum of 17 agreement, as a number of states do, 18 with the Corps. And in their Corps 19 permitting process, there's a 20 requirement to do this -- this Water 21 Quality Certification. So the 22 Department does the Water Quality 23 Certification. The Corps issues the</p>
Page 714	Page 716
<p>1 expanding a landfill. So part of that 2 permit is the physical filling of the 3 wetlands, you know, putting the dirt 4 in there. Part of it, also in this 5 case, was they had to get some offsets 6 from -- there's a -- there's a bank 7 where you go -- the President's edict 8 from a number of years ago, no 9 reduction in wetlands. 10 HEARING OFFICER: Correct. 11 THE WITNESS: So there's -- there's 12 a cred -- a bank of wetlands out 13 there that they had to go and 14 purchase, I guess, for -- for 15 protection. So by, in essence, 16 filling in this wetness -- this 17 wetland, they are creating another 18 wetland somewhere else, so there's 19 that no net loss. 20 HEARING OFFICER: Right. 21 THE WITNESS: Once this wetland 22 under the Corps permit is filled in, 23 it's no longer a wetland, and that's</p>	<p>1 permit for the filling of the 2 wetlands, be it for a landfill, or a 3 road, or Walmart, whatever it might 4 be. 5 HEARING OFFICER: Can the 6 Department disagree with the Corps' 7 determination about wetlands? 8 THE WITNESS: Well, I guess 9 the -- I'd say Mr. Hughes would have 10 been better, but I -- I would say that 11 what we would do in that case is we 12 would not issue that Water Quality 13 Certification. That's part and parcel 14 of it. So I guess that would be the 15 mechanism by which we would disagree 16 with whatever is being proposed. 17 HEARING OFFICER: There would be 18 some in our society that say that the 19 Corps and maybe the Department doesn't 20 protect wetlands enough, and there'd 21 be some in our society who say they 22 protect them too much, and there ought 23 to be more development. Is that a</p>

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<p>1 fair statement?</p> <p>2 THE WITNESS: It is. I'd say it</p> <p>3 this way: First day I was here back</p> <p>4 in 1988, my division chief at the time</p> <p>5 told me, Any time you make a decision,</p> <p>6 if everybody's mad at you, you</p> <p>7 probably made the right one.</p> <p>8 HEARING OFFICER: Sounds like a</p> <p>9 judge's job.</p> <p>10 Mr. Davis, you have helped me</p> <p>11 greatly. I appreciate the answers to</p> <p>12 my questions.</p> <p>13 THE WITNESS: Thank you.</p> <p>14 HEARING OFFICER: Next witness?</p> <p>15 MR. CARTER: That was all the</p> <p>16 witnesses we're calling, Your Honor.</p> <p>17 HEARING OFFICER: Subject to our</p> <p>18 witness out of order, then</p> <p>19 you're -- you're resting, I suppose?</p> <p>20 MR. CARTER: All right. Yes, sir.</p> <p>21 HEARING OFFICER: And I will give</p> <p>22 you leeway, depending on what</p> <p>23 our -- our out-of-order witness</p>	<p>1 modification plans shown on Exhibit P-5?</p> <p>2 A. It is.</p> <p>3 Q. So you're familiar with this</p> <p>4 project?</p> <p>5 A. I am.</p> <p>6 Q. If you would take a look at that</p> <p>7 manual in front of you and, specifically,</p> <p>8 Exhibit 14 [verbatim] that you're holding in</p> <p>9 your fingers, and let me ask you if you can</p> <p>10 identify that document.</p> <p>11 A. I can.</p> <p>12 Q. What is it?</p> <p>13 A. This is a confirmation of the</p> <p>14 purchase of wetlands credits to mitigate the</p> <p>15 wetlands that were identified on our subject</p> <p>16 site, landfill expansion of the active cell.</p> <p>17 Q. Can you explain that a little bit</p> <p>18 more? What's it for?</p> <p>19 A. It's for the purchase of</p> <p>20 land -- wetlands credits for the expansion of</p> <p>21 the existing landfill.</p> <p>22 Q. Yeah. And are those legal</p> <p>23 requirements?</p>
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<p>1 presents. Mr. White?</p> <p>2 MR. WHITE: We do have a witness.</p> <p>3 If we could have about five minutes?</p> <p>4 HEARING OFFICER: Yes, sir. Let's</p> <p>5 take -- I got 21 after 11:00. Let's</p> <p>6 take until 11:30.</p> <p>7 MR. WHITE: Okay.</p> <p>8 (A brief recess was taken.)</p> <p>9 HEARING OFFICER: All right. We</p> <p>10 are back on the record. The case is</p> <p>11 to you, Mr. White. Call your first</p> <p>12 witness.</p> <p>13 MR. WHITE: Thank you, Your</p> <p>14 Honor.</p> <p>15 (The Witness was duly sworn.)</p> <p>16 DIRECT EXAMINATION</p> <p>17 BY MR. WHITE:</p> <p>18 Q. State your name.</p> <p>19 A. Ernest Stokes.</p> <p>20 Q. And how are you employed?</p> <p>21 A. I'm the Senior Civil</p> <p>22 Engineer -- Engineer for the City of Dothan.</p> <p>23 Q. Is that your name on those</p>	<p>1 A. Yes.</p> <p>2 Q. For what?</p> <p>3 A. For mitigating the wetlands.</p> <p>4 Q. Pursuant to --</p> <p>5 A. Fill.</p> <p>6 Q. For?</p> <p>7 A. Landfill construction.</p> <p>8 Q. Who requires that?</p> <p>9 A. The Corps.</p> <p>10 Q. Thank you. You're talking about</p> <p>11 the United States Army Corps of Engineers?</p> <p>12 A. That's correct.</p> <p>13 Q. And did they issue you a permit?</p> <p>14 A. They did.</p> <p>15 Q. For a fill?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And you need those for that</p> <p>18 permit; is that correct?</p> <p>19 A. Yes.</p> <p>20 MR. WHITE: Thank you. I believe</p> <p>21 that exhibit has already been</p> <p>22 admitted.</p> <p>23 MR. LUDDER: I object, Your Honor.</p>

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<p>1 I don't think it has been.</p> <p>2 MR. WHITE: Okay. Well, let me</p> <p>3 offer it then.</p> <p>4 MR. LUDDER: And I object to the</p> <p>5 admission. That's irrelevant.</p> <p>6 MR. WHITE: Okay. Exhibit --</p> <p>7 HEARING OFFICER: I'm not sure</p> <p>8 which one we're talking about.</p> <p>9 MR. WHITE: I got a copy.</p> <p>10 HEARING OFFICER: Okay. You may</p> <p>11 have asked him, and I didn't hear it.</p> <p>12 I apologize.</p> <p>13 MR. LUDDER: And let -- I may be</p> <p>14 wrong. Was that on the joint exhibit</p> <p>15 list?</p> <p>16 MR. WHITE: It was. It's Joint</p> <p>17 Exhibit Number 14 [verbatim].</p> <p>18 MR. LUDDER: It wasn't taken off</p> <p>19 the list?</p> <p>20 MR. CARTER: I didn't -- I don't</p> <p>21 remember -- or anything like that.</p> <p>22 MR. LUDDER: Okay. I agree it's</p> <p>23 authentic. I didn't -- I didn't agree</p>	<p>1 understanding.</p> <p>2 HEARING OFFICER: Okay. Go ahead,</p> <p>3 Mr. White. I understand now.</p> <p>4 MR. WHITE: Okay. So we would</p> <p>5 offer it in that denomination.</p> <p>6 HEARING OFFICER: Joint 14</p> <p>7 [verbatim] is offered?</p> <p>8 MR. WHITE: Yes, sir.</p> <p>9 HEARING OFFICER: And it's</p> <p>10 admitted --</p> <p>11 MR. LUDDER: No, we object, Your</p> <p>12 Honor.</p> <p>13 HEARING OFFICER: You object? On</p> <p>14 what basis?</p> <p>15 MR. LUDDER: On the relevancy.</p> <p>16 MR. CARTER: I'm sorry. I said 14.</p> <p>17 It's 13.</p> <p>18 HEARING OFFICER: 13?</p> <p>19 MR. WHITE: Yes, thank you. It's</p> <p>20 13.</p> <p>21 HEARING OFFICER: Joint Exhibit 13?</p> <p>22 MR. LUDDER: Yeah.</p> <p>23 HEARING OFFICER: Okay. Go ahead,</p>
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<p>1 to relevancy.</p> <p>2 MR. WHITE: Okay. Well, then I'm</p> <p>3 glad that you noticed that so we can</p> <p>4 get it in. All right. This is what</p> <p>5 we're talking about, the --</p> <p>6 HEARING OFFICER: Is this your copy</p> <p>7 or the original?</p> <p>8 MR. WHITE: This is -- we have a</p> <p>9 copy there. Whichever is the most</p> <p>10 convenient. I can label that and</p> <p>11 offer that outside of all these</p> <p>12 others, and it may be the best way to</p> <p>13 do that.</p> <p>14 HEARING OFFICER: Any way you want</p> <p>15 to do it. I'm going to make y'all get</p> <p>16 those exhibits straight when we get</p> <p>17 through, but for purposes of this, is</p> <p>18 that Joint Exhibit 14, or is that just</p> <p>19 a part of 14?</p> <p>20 MR. CARTER: We have -- there's a</p> <p>21 copy of those as Joint Exhibit 14</p> <p>22 [verbatim] in the books.</p> <p>23 MR. WHITE: That was my</p>	<p>1 Mr. White. Let's ask him what it is.</p> <p>2 MR. LUDDER: Your Honor, I -- I --</p> <p>3 I stipulate to the authenticity of the</p> <p>4 document. I object to the relevancy</p> <p>5 of the document.</p> <p>6 HEARING OFFICER: Okay. Then that</p> <p>7 makes it easy on me. Overruled.</p> <p>8 MR. WHITE: Thank you. Where was</p> <p>9 I? I believe -- I don't know.</p> <p>10 HEARING OFFICER: And it is</p> <p>11 admitted.</p> <p>12 (Exhibit No. J-13 was admitted</p> <p>13 into evidence.)</p> <p>14 THE WITNESS: There's two documents</p> <p>15 there.</p> <p>16 MR. LUDDER: Okay. Thank you.</p> <p>17 MR. WHITE: We're going to offer</p> <p>18 this as City 4; otherwise, as</p> <p>19 Intervenor 4.</p> <p>20 HEARING OFFICER: Okay.</p> <p>21 MR. LUDDER: I'm sorry. Are we</p> <p>22 offering now before --</p> <p>23 MR. WHITE: No. I'm just going to</p>

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<p>1 lay it there and show it to him.</p> <p>2 MR. LUDDER: Okay.</p> <p>3 BY MR. WHITE:</p> <p>4 Q. Let me show you what's been marked</p> <p>5 as I-4 and ask you if you can identify that</p> <p>6 document.</p> <p>7 A. I can. This is where the City</p> <p>8 Commission approved our solid waste management</p> <p>9 plan.</p> <p>10 Q. Okay. And if you would, please,</p> <p>11 look at Intervenor 5 and ask you if you can</p> <p>12 identify that document.</p> <p>13 A. This is where the City Commission</p> <p>14 adopted our solid waste management plan.</p> <p>15 Q. What else? Is there anything else</p> <p>16 included in all those pages there?</p> <p>17 A. The solid waste management plan.</p> <p>18 MR. WHITE: Thank you. We offer</p> <p>19 Intervenor 4 and 5.</p> <p>20 MR. LUDDER: Object to the</p> <p>21 relevance. It has nothing to do with</p> <p>22 this permit proceeding.</p> <p>23 MR. CARTER: No objection.</p>	<p>1 presently accepting solid waste?</p> <p>2 A. It is.</p> <p>3 MR. WHITE: That's all.</p> <p>4 HEARING OFFICER: Questions from</p> <p>5 the Department?</p> <p>6 MR. CARTER: No questions, Your</p> <p>7 Honor.</p> <p>8 HEARING OFFICER: Cross,</p> <p>9 Mr. Ludder?</p> <p>10 MR. LUDDER: Yes.</p> <p>11 CROSS-EXAMINATION</p> <p>12 BY MR. LUDDER:</p> <p>13 Q. Mr. Stokes, you indicate that the</p> <p>14 existing landfill is currently in operation; is</p> <p>15 that correct?</p> <p>16 A. It is.</p> <p>17 Q. Has the amount of waste being</p> <p>18 disposed of at the existing landfill declined</p> <p>19 significantly since, say, December?</p> <p>20 A. This past December?</p> <p>21 Q. Yes.</p> <p>22 A. I would say no.</p> <p>23 Q. All right. Is the City sending</p>
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<p>1 HEARING OFFICER: Overruled. It's</p> <p>2 admitted.</p> <p>3 (Exhibits No. I-4 & I-5 were</p> <p>4 collectively admitted</p> <p>5 into evidence.)</p> <p>6 BY MR. WHITE:</p> <p>7 Q. Mr. Stokes, are you familiar with</p> <p>8 the landfill operations in the vicinity of Webb</p> <p>9 Road?</p> <p>10 A. Yes, I am.</p> <p>11 Q. Okay. Are you familiar with the</p> <p>12 existing landfill just off of Webb Road?</p> <p>13 A. The active landfill?</p> <p>14 Q. Yes, sir.</p> <p>15 A. I am.</p> <p>16 Q. And is that permitted under Permit</p> <p>17 35-06?</p> <p>18 A. It is.</p> <p>19 Q. Okay. And is that the landfill</p> <p>20 for which the City is seeking a modification for</p> <p>21 expansion?</p> <p>22 A. Yes, it is.</p> <p>23 Q. Is that current active landfill</p>	<p>1 municipal waste to the state of Florida for</p> <p>2 disposal?</p> <p>3 A. Yes.</p> <p>4 Q. And that waste would normally have</p> <p>5 gone to the landfill in Dothan, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And what portion of the -- can you</p> <p>8 tell me anything about the volume that's going</p> <p>9 to Florida versus the volume that's now being</p> <p>10 disposed of in Dothan?</p> <p>11 A. The volume going to Florida is</p> <p>12 considerably higher than what's going on into</p> <p>13 the current landfill.</p> <p>14 Q. All right. And the volume going</p> <p>15 to Florida would have been disposed of at the</p> <p>16 existing landfill if you had space for it,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And over the past number of</p> <p>20 years, that volume would have gone to the Dothan</p> <p>21 landfill?</p> <p>22 A. Yes.</p> <p>23 Q. Did the City have an opportunity</p>

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<p>1 to review the permit application that was 2 prepared by, I think it was CDG Engineers, 3 before it was submitted to ADEM? 4 A. Yes. 5 Q. Would that have been you? 6 A. Yes, I looked through it. 7 Q. Okay. Was there anybody else in 8 the City that was more responsible for that than 9 you? 10 A. Probably joined up with Jerry 11 Corbin. 12 Q. Okay. Did you -- do you recall 13 having seen in the application a list of what 14 was described as adjoining owners to the 15 landfill? 16 A. I would have to look at it to see. 17 Q. If we -- if we looked at it in the 18 application, would it refresh your memory as to 19 whether you had seen it before? 20 A. Probably so. 21 Q. All right. Let's do that. Okay. 22 I'm showing you now what's been marked as 23 Exhibit P-3 -- excuse me, J-3, Part I, which is</p>	<p>1 Q. Do you know that his property 2 abuts the landfill? 3 A. I think they share a property 4 corner. 5 Q. Okay. Do you know where the -- I 6 withdraw the question. 7 MR. LUDDER: No further questions. 8 HEARING OFFICER: Redirect? 9 MR. WHITE: No questions. 10 HEARING OFFICER: Questions from 11 the Department? 12 MR. CARTER: No, sir. 13 HEARING OFFICER: All right. May 14 this Witness be excused? 15 MR. WHITE: Yes, sir. 16 HEARING OFFICER: Thank you, sir. 17 Anything else from the Intervenor, 18 City of Dothan? 19 MR. WHITE: No, Your Honor. 20 HEARING OFFICER: All right. Any 21 other evidence we're going to present 22 today? 23 (No response was heard.)</p>
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<p>1 the operations manual part of the application. 2 And there's a section in it labeled, Appendix 3 4.1 and titled, Adjoining Property Owners. If 4 you would, take a look at that and the 5 subsequent pages and see if that refreshes your 6 recollection of having seen that document 7 before. 8 A. Yes, I've seen this. 9 Q. Okay. Did the City have any 10 question, or did -- I withdraw that. 11 Did the City or you make any investigation 12 of whether that list was complete? 13 A. I don't recall specifically doing 14 that, but I would think we would have looked at 15 it. 16 Q. Okay. Do you know Michael Del 17 Vecchio? 18 A. I do. 19 Q. Do you know where he lives? 20 A. I do. 21 Q. Have you ever been on his 22 property? 23 A. I have.</p>	<p>1 HEARING OFFICER: All right. Let's 2 go off the record for a moment. 3 (A discussion was held off the 4 record.) 5 HEARING OFFICER: All right. We 6 are back on the record, and as I 7 understand it from the attorneys 8 involved in this case, we have 9 tentatively completed -- anybody else 10 out there? 11 MR. DAVIS: No, sir. 12 HEARING OFFICER: Okay. All right. 13 As I said, we are back on the record 14 in this case, and as I've determined 15 from talking to the attorneys while we 16 were on break, I think our plan is 17 that in regard to the exhibits, we're 18 going to ask our court reporter, 19 Patrick Miller, to prepare the parties 20 a list from his incomplete transcript 21 of all the documents that he has as 22 admitted into the record. We'll ask 23 him to communicate that to you by</p>

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<p>1 e-mail and to me, and we'll facilitate 2 those e-mail addresses for you, 3 Patrick. And then in between, we 4 still expect that we will 5 reconvene this -- this case at some 6 time in the near future to hear the 7 testimony of Ms. Dean and any other 8 evidence that might need to be 9 presented. In regard to the exhibits, 10 if the parties have some additional 11 exhibits they want to introduce, 12 they'll be prepared to introduce those 13 when we reconvene for Ms. Dean's 14 testimony. 15 Did I cover that adequately, 16 Mr. Ludder? 17 MR. LUDDER: One request is that if 18 Patrick could also prepare a list of 19 exhibits that were identified and 20 discussed by a witness but not 21 admitted -- 22 HEARING OFFICER: And I would say 23 that's a -- a motion well taken.</p>	<p>1 asking? 2 COURT REPORTER: I think so. 3 MR. WHITE: And it may not be 4 referred to as a document. It'll just 5 be -- it'll be a document, but I'm 6 showing you a document, I mean, a 7 letter or a plan or a set of plans 8 or -- you know, it won't be, I'm 9 showing you an exhibit, I'm showing 10 you a drawing, I'm showing you -- 11 HEARING OFFICER: Anything you can 12 identify for us, Patrick, do it, 13 please. And I don't know -- we should 14 have done -- all of us should have 15 done a little better job on those 16 exhibits, but we'll -- we'll live and 17 learn. 18 Okay. Anything else? All right. 19 I'm going to say this now even though 20 we're not completed. I've been 21 practicing law for a long time, and 22 I'm a -- we're on the record. We are 23 definitely on the record. It's not</p>
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<p>1 And I would ask you to do that, 2 Patrick. 3 All right. We are going to 4 additionally say on the record that -- 5 MR. WHITE: Let -- excuse me -- on 6 that motion -- 7 HEARING OFFICER: Go ahead. 8 MR. WHITE: The specific motion 9 related to exhibits that were 10 discussed but if -- it may not have 11 been referred to as an exhibit if it 12 wasn't introduced. If a document was 13 discussed, as opposed to, I have an 14 exhibit here, as opposed to, I have 15 this document here because typically, 16 the exhibits are going to be here, I 17 would expect, more likely than 18 something we just talked about in the 19 way of a document, and it was 20 discussed. 21 HEARING OFFICER: You may -- you 22 may well be right. I don't know if 23 Patrick -- you understand what he's</p>	<p>1 about me, though. We are -- I've been 2 practicing law for a long time. I've 3 been a sole practitioner for the vast 4 majority of about 39 years now. I run 5 across a lot of people in a small 6 practice of law, and a lot of lawyers 7 both good and bad. One of the great 8 pleasures of my practice is getting to 9 come over here and other 10 administrative agencies and deal with 11 professionals like y'all who handle 12 this case in a very professional 13 manner. And I appreciate the 14 courtesies you've extended to me, and 15 I appreciate the courtesies you've 16 extended to each other, and I 17 appreciate your preparedness, your 18 professionalism, and all that you've 19 done in representing your clients as 20 both an advocate and -- and I just 21 can't tell you what a privilege it is 22 to deal with good lawyers like all of 23 you that are involved in this case.</p>

<p style="text-align: right;">Page 737</p> <p>1 The corollary to that is you make my 2 job very difficult. You've got a lot 3 of evidence before me that makes 4 decision-making hard. If you've never 5 been in this position, and some of you 6 may have in some form or the other, 7 it's not as easy as you might think. 8 Both sides -- all three sides, I 9 should say in this case, present 10 compelling argument in evidence, and I 11 expect to see that some more in the 12 briefs and recommendations. But I 13 want to commend you all -- I want to 14 tell your clients in this public 15 record what a good job you do for 16 them, and I appreciate it very much, 17 both as the Hearing Officer in this 18 case and as a tax-paying citizen of 19 the State of Alabama. And even 20 though, Mr. Ludder, you are now in 21 Florida, that... 22 With that, we'll be in recess until 23 a date determined by a -- probably a</p>	<p style="text-align: right;">Page 739</p> <p>1 (Whereupon, the hearing 2 adjourned at 12:22 p.m.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 * * * * *</p>
<p style="text-align: right;">Page 738</p> <p>1 conference call, and we will -- we 2 will reconvene at that time. Until 3 that time the record remains open. 4 We are in recess. 5 MR. WHITE: Thank you. 6 MR. CARTER: Thank you, Your Honor. 7 HEARING OFFICER: You need 8 something on the record, David? 9 MR. LUDDER: Back on the record for 10 just a second. I would like to extend 11 my appreciation to the Hearing 12 Officer -- 13 HEARING OFFICER: No, no -- 14 MR. LUDDER: This isn't -- this 15 isn't sucking up. It's really -- it's 16 a pleasure to work with judges and 17 hearing officers that are flexible and 18 courteous and accommodating, and 19 that's appreciated. 20 HEARING OFFICER: All right. Now, 21 we're off the record. 22 23 * * * * *</p>	<p style="text-align: right;">Page 740</p> <p>1 REPORTER'S CERTIFICATE 2 STATE OF ALABAMA 3 MONTGOMERY COUNTY 4 I, Patrick Miller, Alabama Certified 5 Court Reporter No. 2037, and Commissioner for 6 the State of Alabama at Large, hereby certify 7 that on Thursday, June 2nd, 2016, I reported the 8 TESTIMONY AND PROCEEDINGS in the matter of the 9 foregoing cause, and that the pages herein 10 contain a true and accurate transcription of 11 said proceedings. 12 I further certify that I am neither kin 13 nor of counsel to the parties to said cause, nor 14 in any manner interested in the results thereof. 15 This 13th day of June, 2016. 16 17 18 19 20 PATRICK MILLER, ACCR-2037 21 Commissioner for the 22 State of Alabama at Large 23 MY LICENSE EXPIRES: 8/24/16 MY COMMISSION EXPIRES: 2/19/19</p>

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